

“(d) The period of one year specified in section 102(b) of Title 35 as enacted by section 1 hereof shall not apply in the case of applications filed before August 5, 1940, and patents granted on such applications, and with respect to such applications and patents, said period is two years instead of one year.

“(e) Nothing contained in Title 35, as enacted by section 1 hereof, shall operate to nullify any judicial finding prior to the effective date of this Act on the validity of any patent by a court of competent jurisdiction.

“(f) Nothing in Title 35, as enacted by section 1 hereof, shall affect any provision of the Atomic Energy Act of 1946 (Aug. 1, 1946, ch. 724, 60 Stat. 755) [§2011 et seq. of Title 42, The Public Health and Welfare].

“(g) The period of one year specified in section 4 of Title 35 as enacted by section 1 hereof shall not apply in the case of applications filed before the effective date of this Act.

“(h) The repeal of sections 1–9, 11, 12 of the Act of Congress approved February 1, 1952 (ch. 4, 66 Stat. 3) [sections 151 to 159 of former Title 35], shall not affect any rights or liabilities existing on the date of approval of this Act [July 19, 1952]. An order of secrecy issued under or in effect under the repealed Act and in effect on the date of approval of this Act, shall be considered as issued under this Act, and any claims arising under the repealed Act or subject to presentation and determination pursuant thereto and unsettled as of the effective date of this Act, may be presented and determined pursuant to the provisions of this Act [this title].”

REPEALS

Section 5 of act July 19, 1952, ch. 950, 66 Stat. 815, repealed the sections or parts of sections of the Revised Statutes or Statutes at Large codified in this Act with the proviso that “Any rights or liabilities now existing under such sections or parts thereof shall not be affected by this repeal.”

PART I—UNITED STATES PATENT AND TRADEMARK OFFICE

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AMENDMENTS

2002—Pub. L. 107–273, div. C, title III, §13206(a)(4), Nov. 2, 2002, 116 Stat. 1904, substituted “Before” for “before” in chapter 3 heading.

1999—Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(a)(2), (3)], Nov. 29, 1999, 113 Stat. 1536, 1501A–582, substituted “UNITED STATES PATENT AND TRADEMARK OFFICE” for “PATENT AND TRADEMARK OFFICE” in part heading and “Establishment, Officers and Employees, Functions” for “Establishment, Officers, Functions” in chapter 1 heading.

1991—Pub. L. 102–204, §5(d)(2)(D), Dec. 10, 1991, 105 Stat. 1640, substituted “before” for “Before the” in chapter 3 heading and inserted “; Funding; Search Systems” after “Fees” in chapter 4 heading.

1975—Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949, substituted “PATENT AND TRADEMARK OFFICE” for “PATENT OFFICE” in part heading and in headings for chapters 2 and 3.

CHAPTER 1—ESTABLISHMENT, OFFICERS AND EMPLOYEES, FUNCTIONS

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| 1. | Establishment. |
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| 14. | Renumbered 13.] |

AMENDMENTS

2002—Pub. L. 107–273, div. C, title III, §13205(2)(D), Nov. 2, 2002, 116 Stat. 1903, made technical correction to directory language of Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4507(4)], Nov. 29, 1999, 113 Stat. 1536, 1501A–566. See 1999 Amendment note below.

1999—Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(a)(4)], Nov. 29, 1999, 113 Stat. 1536, 1501A–582, amended analysis generally, substituting “OFFICERS AND EMPLOYEES” for “OFFICERS” in chapter heading, substituting “Powers and duties” for “Seal” in item 2, adding item 5, renumbering items 7 to 14 as 6 to 13, respectively, striking out former item 6, “Duties of Commissioner”, and inserting “and applications” after “patents” in items 11 and 12.

Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §§4507(4), 4508], Nov. 29, 1999, 113 Stat. 1536, 1501A–566, as amended by Pub. L. 107–273, div. C, title III, §13205(2)(D), Nov. 2, 2002, 116 Stat. 1903, which directed the insertion of “and applications” after “patents” in items 11 and 12, effective 1 year after Nov. 29, 1999, was not executed in either item to reflect the probable intent of Congress. See above.

1984—Pub. L. 98–622, title II, §201(b), Nov. 8, 1984, 98 Stat. 3386, substituted “Patent Appeals and Interferences” for “Appeals” in item 7.

1972—Pub. L. 92–310, title II, §208(b), June 6, 1972, 86 Stat. 203, struck out item 5 “Bond of Commissioner and other officers”.

§ 1. Establishment

(a) **ESTABLISHMENT.**—The United States Patent and Trademark Office is established as an agency of the United States, within the Department of Commerce. In carrying out its functions, the United States Patent and Trademark Office shall be subject to the policy direction of the Secretary of Commerce, but otherwise shall retain responsibility for decisions regarding the management and administration of its operations and shall exercise independent control of its budget allocations and expenditures, personnel decisions and processes, procurements, and other administrative and management functions in accordance with this title and applicable provisions of law. Those operations designed to grant and issue patents and those operations which are designed to facilitate the registration of trademarks shall be treated as separate operating units within the Office.

(b) **OFFICES.**—The United States Patent and Trademark Office shall maintain its principal office in the metropolitan Washington, D.C., area, for the service of process and papers and for the purpose of carrying out its functions. The United States Patent and Trademark Office shall be deemed, for purposes of venue in civil actions, to be a resident of the district in which

its principal office is located, except where jurisdiction is otherwise provided by law. The United States Patent and Trademark Office may establish satellite offices in such other places in the United States as it considers necessary and appropriate in the conduct of its business.

(c) REFERENCE.—For purposes of this title, the United States Patent and Trademark Office shall also be referred to as the “Office” and the “Patent and Trademark Office”.

(July 19, 1952, ch. 950, 66 Stat. 792; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4711], Nov. 29, 1999, 113 Stat. 1536, 1501A-572.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 1 (R.S. 475 and Executive Order 4175, Mar. 17, 1925).

The word “all” is omitted from the corresponding section of the existing statute and “except as otherwise provided by law” added, since some old records are kept in the National Archives, see 44 U.S.C., 1946 ed., ch. 8A.

The word “models” has been omitted to remove emphasis on models since they are no longer generally required. They are included by the word “things.”

The phrase “and to trade-mark registrations” is added. There is no enactment corresponding to this section in the trade-mark law. The original chapter of the Revised Statutes containing this section deals with the Patent Office as such in its administration of trade-marks as well as patents. This is explicitly brought out in some of the corresponding sections of the present chapter. Changes in language are made.

AMENDMENTS

1999—Pub. L. 106-113 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: “The Patent and Trademark Office shall continue as an office in the Department of Commerce, where records, books, drawings, specifications, and other papers and things pertaining to patents and to trademark registrations shall be kept and preserved, except as otherwise provided by law.”

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

CHANGE OF NAME

Section 3 of Pub. L. 93-596 provided that: “The terms ‘Patent Office’ and ‘Commissioner of Patents’ in all laws of the United States shall mean ‘Patent and Trademark Office’ and ‘Commissioner of Patents and Trademarks’, respectively.”

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, subtitle G, § 4731], Nov. 29, 1999, 113 Stat. 1536, 1501A-581, provided that: “This subtitle [see Tables for classification] and the amendments made by this subtitle shall take effect 4 months after the date of the enactment of this Act [Nov. 29, 1999].”

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108-453, § 1, Dec. 10, 2004, 118 Stat. 3596, provided that: “This Act [amending section 103 of this title and enacting provisions set out as a note under section 103 of this title] may be cited as the ‘Cooperative Research and Technology Enhancement (CREATE) Act of 2004’.”

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107-273, div. C, title III, § 13201, Nov. 2, 2002, 116 Stat. 1901, provided that: “This subtitle [subtitle B

(§§ 13201-13211) of title III of div. C of Pub. L. 107-273, see Tables for classification] may be cited as the ‘Intellectual Property and High Technology Technical Amendments Act of 2002’.”

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106-113, div. B, § 1000(a)(9) [§ 1(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A-521, provided that: “This Act [S. 1948, as enacted by section 1000(a)(9) of Pub. L. 106-113, see Tables for classification] may be cited as the ‘Intellectual Property and Communications Omnibus Reform Act of 1999’.”

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4001], Nov. 29, 1999, 113 Stat. 1536, 1501A-552, provided that: “This title [see Tables for classification] may be cited as the ‘American Inventors Protection Act of 1999’.”

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, subtitle A, § 4101], Nov. 29, 1999, 113 Stat. 1536, 1501A-552, provided that: “This subtitle [enacting section 297 of this title and provisions set out as a note under section 297 of this title] may be cited as the ‘Inventors’ Rights Act of 1999’.”

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, subtitle B, § 4201], Nov. 29, 1999, 113 Stat. 1536, 1501A-554, provided that: “This subtitle [amending sections 41 and 42 of this title and enacting provisions set out as notes under section 41 of this title and section 1113 of Title 15, Commerce and Trade] may be cited as the ‘Patent and Trademark Fee Fairness Act of 1999’.”

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, subtitle C, § 4301], Nov. 29, 1999, 113 Stat. 1536, 1501A-555, provided that: “This subtitle [enacting section 273 of this title and provisions set out as a note under section 273 of this title] may be cited as the ‘First Inventor Defense Act of 1999’.”

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, subtitle D, § 4401], Nov. 29, 1999, 113 Stat. 1536, 1501A-557, provided that: “This subtitle [amending sections 132, 154, 156, and 282 of this title and section 1295 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under sections 132 and 154 of this title] may be cited as the ‘Patent Term Guarantee Act of 1999’.”

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, subtitle E, § 4501], Nov. 29, 1999, 113 Stat. 1536, 1501A-561, provided that: “This subtitle [amending sections 11 to 13, 102, 119, 120, 122, 135, 154, 181, 252, 284, and 374 of this title and enacting provisions set out as notes under sections 11, 41, and 122 of this title] may be cited as the ‘Domestic Publication of Foreign Filed Patent Applications Act of 1999’.”

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, subtitle F, § 4601], Nov. 29, 1999, 113 Stat. 1536, 1501A-567, provided that: “This subtitle [enacting chapter 31 of this title, amending sections 41, 100, 134, 141, 143, and 145 of this title, and enacting provisions set out as notes under sections 41, 311, and 315 of this title] may be cited as the ‘Optional Inter Partes Reexamination Procedure Act of 1999’.”

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, subtitle G, § 4701], Nov. 29, 1999, 113 Stat. 1536, 1501A-572, provided that: “This subtitle [see Tables for classification] may be cited as the ‘Patent and Trademark Office Efficiency Act’.”

SHORT TITLE OF 1998 AMENDMENTS

Pub. L. 105-358, § 1, Nov. 10, 1998, 112 Stat. 3272, provided that: “This Act [amending sections 41 and 42 of this title and enacting provisions set out as a note under section 41 of this title] may be cited as the ‘United States Patent and Trademark Office Reauthorization Act, Fiscal Year 1999’.”

Pub. L. 105-289, § 1, Oct. 27, 1998, 112 Stat. 2780, provided that: “This Act [amending section 163 of this title and enacting provisions set out as notes under sections 41 and 163 of this title] may be cited as the ‘Plant Patent Amendments Act of 1998’.”

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-418, § 9001, Aug. 23, 1988, 102 Stat. 1563, provided that: “This subtitle [subtitle A (§§ 9001-9007) of

title IX of Pub. L. 100-418, enacting section 295 of this title, amending sections 154, 271, and 287 of this title, and enacting provisions set out as notes under section 271 of this title] may be cited as the ‘Process Patent Amendments Act of 1988’.”

Pub. L. 100-418, title IX, §9101(a), Aug. 23, 1988, 102 Stat. 1567, provided that: “This section [amending sections 184 to 186 of this title and enacting provisions set out as notes under section 184 of this title] may be cited as the ‘Patent Law Foreign Filing Amendments Act of 1988’.”

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-622, §1, Nov. 8, 1984, 98 Stat. 3383, provided that: “This Act [enacting section 157 of this title, amending sections 3, 7, 41, 103, 104, 116, 120, 134, 135, 141, 145, 146, 271, 305, 351, 361, 362, 365 to 368, 371 to 373, and 376 of this title, section 1295 of Title 28, Judiciary and Judicial Procedure, and sections 2182 and 2457 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under sections 7, 41, 103, 157, and 351 of this title] may be cited as the ‘Patent Law Amendments Act of 1984’.”

TRANSFER OF FUNCTIONS AND ASSETS OF PATENT AND TRADEMARK OFFICE

Pub. L. 106-113, div. B, §1000(a)(9) [title IV, subtitle G, chapter 3], Nov. 29, 1999, 113 Stat. 1536, 1501A-585, provided that:

“SEC. 4741. REFERENCES.

“(a) IN GENERAL.—Any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a department or office from which a function is transferred by this subtitle [see Tables for classification]—

“(1) to the head of such department or office is deemed to refer to the head of the department or office to which such function is transferred; or

“(2) to such department or office is deemed to refer to the department or office to which such function is transferred.

“(b) SPECIFIC REFERENCES.—Any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to the Patent and Trademark Office—

“(1) to the Commissioner of Patents and Trademarks is deemed to refer to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office;

“(2) to the Assistant Commissioner for Patents is deemed to refer to the Commissioner for Patents; or

“(3) to the Assistant Commissioner for Trademarks is deemed to refer to the Commissioner for Trademarks.

“SEC. 4742. EXERCISE OF AUTHORITIES.

“Except as otherwise provided by law, a Federal official to whom a function is transferred by this subtitle may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function under this subtitle.

“SEC. 4743. SAVINGS PROVISIONS.

“(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, agreements, certificates, licenses, and privileges—

“(1) that have been issued, made, granted, or allowed to become effective by the President, the Secretary of Commerce, any officer or employee of any office transferred by this subtitle, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred by this subtitle; and

“(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date),

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law.

“(b) PROCEEDINGS.—This subtitle shall not affect any proceedings or any application for any benefits, service, license, permit, certificate, or financial assistance pending on the effective date of this subtitle [see Effective Date of 1999 Amendment note above] before an office transferred by this subtitle, but such proceedings and applications shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this subtitle had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this subtitle had not been enacted.

“(c) SUITS.—This subtitle shall not affect suits commenced before the effective date of this subtitle, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this subtitle had not been enacted.

“(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Commerce or the Secretary of Commerce, or by or against any individual in the official capacity of such individual as an officer or employee of an office transferred by this subtitle, shall abate by reason of the enactment of this subtitle.

“(e) CONTINUANCE OF SUITS.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and under this subtitle such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

“(f) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this subtitle, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred by this subtitle shall apply to the exercise of such function by the head of the Federal agency, and other officers of the agency, to which such function is transferred by this subtitle.

“SEC. 4744. TRANSFER OF ASSETS.

“Except as otherwise provided in this subtitle, so much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with a function transferred to an official or agency by this subtitle shall be available to the official or the head of that agency, respectively, at such time or times as the Director of the Office of Management and Budget directs for use in connection with the functions transferred.

“SEC. 4745. DELEGATION AND ASSIGNMENT.

“Except as otherwise expressly prohibited by law or otherwise provided in this subtitle, an official to whom functions are transferred under this subtitle (including the head of any office to which functions are transferred under this subtitle) may delegate any of the functions so transferred to such officers and employees of the office of the official as the official may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions under this section or under any other provision of this subtitle shall relieve the official to whom a function is transferred under this subtitle of responsibility for the administration of the function.

“SEC. 4746. AUTHORITY OF DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET WITH RESPECT TO FUNCTIONS TRANSFERRED.

“(a) DETERMINATIONS.—If necessary, the Director of the Office of Management and Budget shall make any determination of the functions that are transferred under this subtitle.

“(b) INCIDENTAL TRANSFERS.—The Director of the Office of Management and Budget, at such time or times as the Director shall provide, may make such determinations as may be necessary with regard to the functions transferred by this subtitle, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this subtitle. The Director shall provide for the termination of the affairs of all entities terminated by this subtitle and for such further measures and dispositions as may be necessary to effectuate the purposes of this subtitle.

“SEC. 4747. CERTAIN VESTING OF FUNCTIONS CONSIDERED TRANSFERS.

“For purposes of this subtitle, the vesting of a function in a department or office pursuant to reestablishment of an office shall be considered to be the transfer of the function.

“SEC. 4748. AVAILABILITY OF EXISTING FUNDS.

“Existing appropriations and funds available for the performance of functions, programs, and activities terminated pursuant to this subtitle shall remain available, for the duration of their period of availability, for necessary expenses in connection with the termination and resolution of such functions, programs, and activities, subject to the submission of a plan to the Committees on Appropriations of the House and Senate in accordance with the procedures set forth in section 605 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999, as contained in Public Law 105-277 [112 Stat. 2681-111].

“SEC. 4749. DEFINITIONS.

“For purposes of this subtitle—

“(1) the term ‘function’ includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program; and

“(2) the term ‘office’ includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.”

FEDERAL AGENCY STATUS FOR PATENT AND TRADEMARK OFFICE

Pub. L. 101-508, title X, §10102, Nov. 5, 1990, 104 Stat. 1388-392, provided that: “For the purposes of Federal law, the Patent and Trademark Office shall be considered a Federal agency. In particular, the Patent and Trademark Office shall be subject to all Federal laws pertaining to the procurement of goods and services that would apply to a Federal agency using appropriated funds, including the Federal Property and Administrative Services Act of 1949 [now chapters 1 to 11 of Title 40, Public Buildings, Property, and Works, and title III of the Act of June 30, 1949 (41 U.S.C. 251 et seq.)] and the Office of Federal Procurement Policy Act [41 U.S.C. 401 et seq.].”

§ 2. Powers and duties

(a) IN GENERAL.—The United States Patent and Trademark Office, subject to the policy direction of the Secretary of Commerce—

(1) shall be responsible for the granting and issuing of patents and the registration of trademarks; and

(2) shall be responsible for disseminating to the public information with respect to patents and trademarks.

(b) SPECIFIC POWERS.—The Office—

(1) shall adopt and use a seal of the Office, which shall be judicially noticed and with which letters patent, certificates of trademark registrations, and papers issued by the Office shall be authenticated;

(2) may establish regulations, not inconsistent with law, which—

(A) shall govern the conduct of proceedings in the Office;

(B) shall be made in accordance with section 553 of title 5;

(C) shall facilitate and expedite the processing of patent applications, particularly those which can be filed, stored, processed, searched, and retrieved electronically, subject to the provisions of section 122 relating to the confidential status of applications;

(D) may govern the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Office, and may require them, before being recognized as representatives of applicants or other persons, to show that they are of good moral character and reputation and are possessed of the necessary qualifications to render to applicants or other persons valuable service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office;

(E) shall recognize the public interest in continuing to safeguard broad access to the United States patent system through the reduced fee structure for small entities under section 41(h)(1) of this title; and

(F) provide for the development of a performance-based process that includes quantitative and qualitative measures and standards for evaluating cost-effectiveness and is consistent with the principles of impartiality and competitiveness;

(3) may acquire, construct, purchase, lease, hold, manage, operate, improve, alter, and renovate any real, personal, or mixed property, or any interest therein, as it considers necessary to carry out its functions;

(4)(A) may make such purchases, contracts for the construction, maintenance, or management and operation of facilities, and contracts for supplies or services, without regard to the provisions of subtitle I and chapter 33 of title 40, title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), and the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.); and

(B) may enter into and perform such purchases and contracts for printing services, including the process of composition, platemaking, presswork, silk screen processes, binding, microform, and the products of such processes, as it considers necessary to carry out the functions of the Office, without regard to sections 501 through 517 and 1101 through 1123 of title 44;

(5) may use, with their consent, services, equipment, personnel, and facilities of other departments, agencies, and instrumentalities of the Federal Government, on a reimbursable basis, and cooperate with such other departments, agencies, and instrumentalities in the establishment and use of services, equipment, and facilities of the Office;

(6) may, when the Director determines that it is practicable, efficient, and cost-effective to do so, use, with the consent of the United States and the agency, instrumentality, Patent and Trademark Office, or international organization concerned, the services, records, facilities, or personnel of any State or local government agency or instrumentality or foreign patent and trademark office or international organization to perform functions on its behalf;

(7) may retain and use all of its revenues and receipts, including revenues from the sale, lease, or disposal of any real, personal, or mixed property, or any interest therein, of the Office;

(8) shall advise the President, through the Secretary of Commerce, on national and certain international intellectual property policy issues;

(9) shall advise Federal departments and agencies on matters of intellectual property policy in the United States and intellectual property protection in other countries;

(10) shall provide guidance, as appropriate, with respect to proposals by agencies to assist foreign governments and international intergovernmental organizations on matters of intellectual property protection;

(11) may conduct programs, studies, or exchanges of items or services regarding domestic and international intellectual property law and the effectiveness of intellectual property protection domestically and throughout the world;

(12)(A) shall advise the Secretary of Commerce on programs and studies relating to intellectual property policy that are conducted, or authorized to be conducted, cooperatively with foreign intellectual property offices and international intergovernmental organizations; and

(B) may conduct programs and studies described in subparagraph (A); and

(13)(A) in coordination with the Department of State, may conduct programs and studies cooperatively with foreign intellectual property offices and international intergovernmental organizations; and

(B) with the concurrence of the Secretary of State, may authorize the transfer of not to exceed \$100,000 in any year to the Department of State for the purpose of making special payments to international intergovernmental organizations for studies and programs for advancing international cooperation concerning patents, trademarks, and other matters.

(c) **CLARIFICATION OF SPECIFIC POWERS.**—(1) The special payments under subsection (b)(13)(B) shall be in addition to any other payments or contributions to international organizations described in subsection (b)(13)(B) and shall not be subject to any limitations imposed by law on the amounts of such other payments or contributions by the United States Government.

(2) Nothing in subsection (b) shall derogate from the duties of the Secretary of State or from the duties of the United States Trade Representative as set forth in section 141 of the Trade Act of 1974 (19 U.S.C. 2171).

(3) Nothing in subsection (b) shall derogate from the duties and functions of the Register of

Copyrights or otherwise alter current authorities relating to copyright matters.

(4) In exercising the Director's powers under paragraphs (3) and (4)(A) of subsection (b), the Director shall consult with the Administrator of General Services.

(5) In exercising the Director's powers and duties under this section, the Director shall consult with the Register of Copyrights on all copyright and related matters.

(d) **CONSTRUCTION.**—Nothing in this section shall be construed to nullify, void, cancel, or interrupt any pending request-for-proposal let or contract issued by the General Services Administration for the specific purpose of relocating or leasing space to the United States Patent and Trademark Office.

(July 19, 1952, ch. 950, 66 Stat. 792; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4712], Nov. 29, 1999, 113 Stat. 1536, 1501A-572; Pub. L. 106-400, § 2, Oct. 30, 2000, 114 Stat. 1675; Pub. L. 107-273, div. C, title III, § 13206(a)(1), Nov. 2, 2002, 116 Stat. 1904; Pub. L. 108-178, § 4(g), Dec. 15, 2003, 117 Stat. 2641.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 3 (R.S. 478).
 "Certificates of trade-mark registrations" is added, see note under section 1. Changes in language are made and the specific date eliminated.

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (b)(4)(A), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title III of the Act is classified generally to subchapter IV (§251 et seq.) of chapter 4 of Title 41, Public Contracts. For complete classification of this Act to the Code, see Tables.

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (b)(4)(A), is Pub. L. 100-77, July 22, 1987, 101 Stat. 482, as amended, which is classified principally to chapter 119 (§11301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of Title 42 and Tables.

AMENDMENTS

2003—Subsec. (b)(4)(A). Pub. L. 108-178 substituted "subtitle I and chapter 33 of title 40, title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)," for "the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), the Public Buildings Act (40 U.S.C. 601 et seq.)."

2002—Subsec. (b)(2)(B), (4)(B). Pub. L. 107-273 struck out "United States Code" before semicolon at end.

2000—Subsec. (b)(4)(A). Pub. L. 106-400 substituted "McKinney-Vento Homeless Assistance Act" for "Stewart B. McKinney Homeless Assistance Act".

1999—Pub. L. 106-113 amended section catchline and text generally. Prior to amendment, text read as follows: "The Patent and Trademark Office shall have a seal with which letters patent, certificates of trademark registrations, and papers issued from the Office shall be authenticated."

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-178 effective Aug. 21, 2002, see section 5 of Pub. L. 108-178, set out as a note under section 5334 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731]

of Pub. L. 106-113, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

ELECTRONIC FILING AND PROCESSING OF PATENT AND TRADEMARK APPLICATIONS

Pub. L. 107-273, div. C, title III, § 13103, Nov. 2, 2002, 116 Stat. 1899, provided that:

“(a) ELECTRONIC FILING AND PROCESSING.—The Director [of the Patent and Trademark Office] shall, beginning not later than 90 days after the date of enactment of this Act [Nov. 2, 2002], and during the 3-year period thereafter, develop an electronic system for the filing and processing of patent and trademark applications, that—

“(1) is user friendly; and

“(2) includes the necessary infrastructure—

“(A) to allow examiners and applicants to send all communications electronically; and

“(B) to allow the Office to process, maintain, and search electronically the contents and history of each application.

“(b) AUTHORIZATION OF APPROPRIATIONS.—Of amounts authorized under section 13102 [set out as a note under section 42 of this title], there is authorized to be appropriated to carry out subsection (a) of this section not more than \$50,000,000 for each of fiscal years 2003, 2004, and 2005. Amounts made available pursuant to this subsection shall remain available until expended.”

§ 3. Officers and employees

(a) UNDER SECRETARY AND DIRECTOR.—

(1) IN GENERAL.—The powers and duties of the United States Patent and Trademark Office shall be vested in an Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (in this title referred to as the “Director”), who shall be a citizen of the United States and who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall be a person who has a professional background and experience in patent or trademark law.

(2) DUTIES.—

(A) IN GENERAL.—The Director shall be responsible for providing policy direction and management supervision for the Office and for the issuance of patents and the registration of trademarks. The Director shall perform these duties in a fair, impartial, and equitable manner.

(B) CONSULTING WITH THE PUBLIC ADVISORY COMMITTEES.—The Director shall consult with the Patent Public Advisory Committee established in section 5 on a regular basis on matters relating to the patent operations of the Office, shall consult with the Trademark Public Advisory Committee established in section 5 on a regular basis on matters relating to the trademark operations of the Office, and shall consult with the respective Public Advisory Committee before submitting budgetary proposals to the Office of Management and Budget or changing or proposing to change patent or trademark user fees or patent or trademark regulations which are subject to the requirement to provide notice and opportunity for public comment under section 553 of title 5, as the case may be.

(3) OATH.—The Director shall, before taking office, take an oath to discharge faithfully the duties of the Office.

(4) REMOVAL.—The Director may be removed from office by the President. The President shall provide notification of any such removal to both Houses of Congress.

(b) OFFICERS AND EMPLOYEES OF THE OFFICE.—

(1) DEPUTY UNDER SECRETARY AND DEPUTY DIRECTOR.—The Secretary of Commerce, upon nomination by the Director, shall appoint a Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office who shall be vested with the authority to act in the capacity of the Director in the event of the absence or incapacity of the Director. The Deputy Director shall be a citizen of the United States who has a professional background and experience in patent or trademark law.

(2) COMMISSIONERS.—

(A) APPOINTMENT AND DUTIES.—The Secretary of Commerce shall appoint a Commissioner for Patents and a Commissioner for Trademarks, without regard to chapter 33, 51, or 53 of title 5. The Commissioner for Patents shall be a citizen of the United States with demonstrated management ability and professional background and experience in patent law and serve for a term of 5 years. The Commissioner for Trademarks shall be a citizen of the United States with demonstrated management ability and professional background and experience in trademark law and serve for a term of 5 years. The Commissioner for Patents and the Commissioner for Trademarks shall serve as the chief operating officers for the operations of the Office relating to patents and trademarks, respectively, and shall be responsible for the management and direction of all aspects of the activities of the Office that affect the administration of patent and trademark operations, respectively. The Secretary may reappoint a Commissioner to subsequent terms of 5 years as long as the performance of the Commissioner as set forth in the performance agreement in subparagraph (B) is satisfactory.

(B) SALARY AND PERFORMANCE AGREEMENT.—The Commissioners shall be paid an annual rate of basic pay not to exceed the maximum rate of basic pay for the Senior Executive Service established under section 5382 of title 5, including any applicable locality-based comparability payment that may be authorized under section 5304(h)(2)(C) of title 5. The compensation of the Commissioners shall be considered, for purposes of section 207(c)(2)(A) of title 18, to be the equivalent of that described under clause (ii) of section 207(c)(2)(A) of title 18. In addition, the Commissioners may receive a bonus in an amount of up to, but not in excess of, 50 percent of the Commissioners' annual rate of basic pay, based upon an evaluation by the Secretary of Commerce, acting through the Director, of the Commissioners' performance as defined in an annual performance agreement between the Commissioners and the

Secretary. The annual performance agreements shall incorporate measurable organization and individual goals in key operational areas as delineated in an annual performance plan agreed to by the Commissioners and the Secretary. Payment of a bonus under this subparagraph may be made to the Commissioners only to the extent that such payment does not cause the Commissioners' total aggregate compensation in a calendar year to equal or exceed the amount of the salary of the Vice President under section 104 of title 3.

(C) REMOVAL.—The Commissioners may be removed from office by the Secretary for misconduct or nonsatisfactory performance under the performance agreement described in subparagraph (B), without regard to the provisions of title 5. The Secretary shall provide notification of any such removal to both Houses of Congress.

(3) OTHER OFFICERS AND EMPLOYEES.—The Director shall—

(A) appoint such officers, employees (including attorneys), and agents of the Office as the Director considers necessary to carry out the functions of the Office; and

(B) define the title, authority, and duties of such officers and employees and delegate to them such of the powers vested in the Office as the Director may determine.

The Office shall not be subject to any administratively or statutorily imposed limitation on positions or personnel, and no positions or personnel of the Office shall be taken into account for purposes of applying any such limitation.

(4) TRAINING OF EXAMINERS.—The Office shall submit to the Congress a proposal to provide an incentive program to retain as employees patent and trademark examiners of the primary examiner grade or higher who are eligible for retirement, for the sole purpose of training patent and trademark examiners.

(5) NATIONAL SECURITY POSITIONS.—The Director, in consultation with the Director of the Office of Personnel Management, shall maintain a program for identifying national security positions and providing for appropriate security clearances, in order to maintain the secrecy of certain inventions, as described in section 181, and to prevent disclosure of sensitive and strategic information in the interest of national security.

(c) CONTINUED APPLICABILITY OF TITLE 5.—Officers and employees of the Office shall be subject to the provisions of title 5, relating to Federal employees.

(d) ADOPTION OF EXISTING LABOR AGREEMENTS.—The Office shall adopt all labor agreements which are in effect, as of the day before the effective date of the Patent and Trademark Office Efficiency Act, with respect to such Office (as then in effect).

(e) CARRYOVER OF PERSONNEL.—

(1) FROM PTO.—Effective as of the effective date of the Patent and Trademark Office Efficiency Act, all officers and employees of the Patent and Trademark Office on the day before such effective date shall become officers

and employees of the Office, without a break in service.

(2) OTHER PERSONNEL.—Any individual who, on the day before the effective date of the Patent and Trademark Office Efficiency Act, is an officer or employee of the Department of Commerce (other than an officer or employee under paragraph (1)) shall be transferred to the Office, as necessary to carry out the purposes of this Act,¹ if—

(A) such individual serves in a position for which a major function is the performance of work reimbursed by the Patent and Trademark Office, as determined by the Secretary of Commerce;

(B) such individual serves in a position that performed work in support of the Patent and Trademark Office during at least half of the incumbent's work time, as determined by the Secretary of Commerce; or

(C) such transfer would be in the interest of the Office, as determined by the Secretary of Commerce in consultation with the Director.

Any transfer under this paragraph shall be effective as of the same effective date as referred to in paragraph (1), and shall be made without a break in service.

(f) TRANSITION PROVISIONS.—

(1) INTERIM APPOINTMENT OF DIRECTOR.—On or after the effective date of the Patent and Trademark Office Efficiency Act, the President shall appoint an individual to serve as the Director until the date on which a Director qualifies under subsection (a). The President shall not make more than one such appointment under this subsection.

(2) CONTINUATION IN OFFICE OF CERTAIN OFFICERS.—(A) The individual serving as the Assistant Commissioner for Patents on the day before the effective date of the Patent and Trademark Office Efficiency Act may serve as the Commissioner for Patents until the date on which a Commissioner for Patents is appointed under subsection (b).

(B) The individual serving as the Assistant Commissioner for Trademarks on the day before the effective date of the Patent and Trademark Office Efficiency Act may serve as the Commissioner for Trademarks until the date on which a Commissioner for Trademarks is appointed under subsection (b).

(July 19, 1952, ch. 950, 66 Stat. 792; Pub. L. 85-933, § 1, Sept. 6, 1958, 72 Stat. 1793; Pub. L. 86-370, § 1(a), Sept. 23, 1959, 73 Stat. 650; Pub. L. 88-426, title III, § 305(26), Aug. 14, 1964, 78 Stat. 425; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 93-601, § 1, Jan. 2, 1975, 88 Stat. 1956; Pub. L. 97-247, § 4, Aug. 27, 1982, 96 Stat. 319; Pub. L. 97-366, § 4, Oct. 25, 1982, 96 Stat. 1760; Pub. L. 98-622, title IV, § 405, Nov. 8, 1984, 98 Stat. 3392; Pub. L. 105-304, title IV, § 401(a)(1), Oct. 28, 1998, 112 Stat. 2887; Pub. L. 106-44, § 2(c), Aug. 5, 1999, 113 Stat. 223; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4713], Nov. 29, 1999, 113 Stat. 1536, 1501A-575; Pub. L. 107-273, div. C, title III, § 13206(a)(2), Nov. 2, 2002, 116 Stat. 1904.)

¹ So in original.

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 2 (R.S. 476, amended (1) Feb. 15, 1916, ch. 22, § 1, 39 Stat. 8, (2) Feb. 14, 1927, ch. 139, § 1, 44 Stat. 1098, (3) Apr. 11, 1930, ch. 132, § 1, 46 Stat. 155).

The temporary designation of the assistant commissioner as Commissioner in case of a vacancy in office is added. This will eliminate complications since present applicable general statutes (5 U.S.C., 1946 ed., § 7) permit a vacancy to be temporarily filled only for not more than 30 days.

Changes in language are made. "Assistant commissioners" is used in the second sentence (and elsewhere in the bill) as referring to all three assistants.

This entire title is subject to Reorganization Plan No. 5 of 1950 (64 Stat. 1263) which vests all functions of the Patent Office in the Secretary of Commerce and authorizes delegation by him. It has been found impractical to so word the various sections of the title, and a general provision has been inserted as the second paragraph of this section of the bill, leaving the wording of various sections of the title in terms of officers previously specified and to whom the functions presently stand delegated.

REFERENCES IN TEXT

For the effective date of the Patent and Trademark Office Efficiency Act, referred to in subsecs. (d) to (f), as 4 months after Nov. 29, 1999, see section 1009(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as an Effective Date of 1999 Amendment note under section 1 of this title.

AMENDMENTS

2002—Subsec. (a)(2)(B). Pub. L. 107-273, § 13206(a)(2)(A), struck out "United States Code," after "title 5."

Subsec. (b)(2)(A). Pub. L. 107-273, § 13206(a)(2)(B)(i), struck out "United States Code" after "title 5".

Subsec. (b)(2)(B). Pub. L. 107-273, § 13206(a)(2)(B)(ii)-(iv), in first sentence, struck out "United States Code," after "section 5382 of title 5," and "United States Code" after "section 5304(h)(2)(C) of title 5", in second sentence, struck out "United States Code," after "for purposes of section 207(c)(2)(A) of title 18," and "United States Code" after "clause (ii) of section 207(c)(2)(A) of title 18", and in last sentence, struck out "United States Code" after "title 3".

Subsec. (b)(2)(C). Pub. L. 107-273, § 13206(a)(2)(B)(v), struck out "United States Code" after "title 5".

Subsec. (c). Pub. L. 107-273, § 13206(a)(2)(C), in heading, struck out "United States Code" before period at end, and in text, struck out "United States Code," after "title 5".

1999—Pub. L. 106-113 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows:

"(a) There shall be in the Patent and Trademark Office a Commissioner of Patents and Trademarks, a Deputy Commissioner, two Assistant Commissioners, and examiners-in-chief appointed under section 7 of this title. The Deputy Commissioner, or, in the event of a vacancy in that office, the Assistant Commissioner senior in date of appointment shall fill the office of Commissioner during a vacancy in that office until the Commissioner is appointed and takes office. The Commissioner of Patents and Trademarks, the Deputy Commissioner, and the Assistant Commissioners shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary of Commerce, upon the nomination of the Commissioner, in accordance with law shall appoint all other officers and employees.

"(b) The Secretary of Commerce may vest in himself the functions of the Patent and Trademark Office and its officers and employees specified in this title and may from time to time authorize their performance by any other officer or employee.

"(c) The Secretary of Commerce is authorized to fix the per annum rate of basic compensation of each ex-

aminer-in-chief in the Patent and Trademark Office at not in excess of the maximum scheduled rate provided for positions in grade 17 of the General Schedule of the Classification Act of 1949, as amended.

"(d) The Commissioner of Patents and Trademarks shall be an Assistant Secretary of Commerce and shall receive compensation at the rate in effect for level III of the Executive Schedule under section 5314 of title 5, United States Code.

"(e) The members of the Trademark Trial and Appeal Board of the Patent and Trademark Office shall each be paid at a rate not to exceed the maximum rate of basic pay payable for GS-16 of the General Schedule under section 5332 of title 5."

Subsec. (d). Pub. L. 106-44 struck out "United States Code" after "title 5".

1998—Subsec. (d). Pub. L. 105-304 substituted "in effect for level III of the Executive Schedule under section 5314 of title 5, United States Code" for "prescribed by law for Assistant Secretaries of Commerce".

1984—Subsec. (e). Pub. L. 98-622 added subsec. (e).

1982—Subsec. (a). Pub. L. 97-247 struck out "not more than fifteen" after "two Assistant Commissioners, and", and inserted "appointed under section 7 of this title" after "examiners-in-chief".

Subsec. (d). Pub. L. 97-366 added subsec. (d).

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office", and "Commissioner of Patents and Trademarks" for "Commissioner of Patents", wherever appearing.

Subsec. (a). Pub. L. 93-601 designated first par. as subsec. (a), redesignated first assistant commissioner as a Deputy Commissioner, granted authority for appointment of not more than fifteen examiners-in-chief to Secretary of Commerce instead of the President, and struck out provision relating to performance by assistant commissioners of duties assigned by Commissioner.

Subsecs. (b), (c). Pub. L. 93-601 designated second and third pars. as subsecs. (b) and (c), respectively.

1964—Pub. L. 88-426 repealed provisions which prescribed annual rate of compensation of Commissioner.

1959—Pub. L. 86-370 authorized Secretary of Commerce to fix compensation of examiners-in-chief.

1958—Pub. L. 85-933 increased number of examiners-in-chief from nine to not more than fifteen and specified annual compensation of Commissioner.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 406(b) of Pub. L. 98-622 provided that: "The amendments made by sections 401, 402, and 405 of this Act [amending this section and sections 361, 366, 371, 372, and 376 of this title] shall take effect six months after the date of the enactment of this Act [Nov. 8, 1984]."

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-247 effective Aug. 27, 1982, see section 17(a) of Pub. L. 97-247, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1975 AMENDMENTS

Section 4(b) of Pub. L. 93-601 provided that: "This Act [amending this section and sections 7 and 151 of this title and enacting provisions set out as a note under section 151 of this title] shall be effective upon enactment [Jan. 2, 1975]. Examiners-in-chief in office on the date of enactment shall continue in office under and in accordance with their then existing appointments."

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-426 effective on first day of first pay period which begins on or after July 1, 1964,

except to the extent provided in section 501(c) of Pub. L. 88-426, see section 501 of Pub. L. 88-426.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 7(b) of Pub. L. 86-370 provided that: "Sections 1 [amending this section, section 7 of this title, and provisions set out as a note below], 3 [amending sections 2205 and 2208 of former Title 5, Executive Departments and Government Officers and Employees], and 6 [amending section 1082 of former Title 5 and section 903 of Title 20, Education] of this Act shall become effective on the first day of the first pay period which begins after the date of enactment of this Act [Sept. 23, 1959]." Such section 7(b) was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 660.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

EXISTING POSITIONS, COMPENSATION, AND APPOINTMENTS UNAFFECTED BY PUB. L. 86-370 UNTIL ACTION TAKEN UNDER AMENDMENTS

Section 1(c) of Pub. L. 86-370 provided that: "The amendments made by this section [amending sections 1 and 7 of this title] shall not affect—

"(1) any position of examiner-in-chief or designated examiner-in-chief existing immediately prior to the effective date of this section [see Effective Date of 1959 Amendment note set out above], or

"(2) any incumbent of any such position, his appointment thereto, his rate of compensation, or his right to receive such compensation, until appropriate action is taken under authority of such amendments."

§ 4. Restrictions on officers and employees as to interest in patents

Officers and employees of the Patent and Trademark Office shall be incapable, during the period of their appointments and for one year thereafter, of applying for a patent and of acquiring, directly or indirectly, except by inheritance or bequest, any patent or any right or interest in any patent, issued or to be issued by the Office. In patents applied for thereafter they shall not be entitled to any priority date earlier than one year after the termination of their appointment.

(July 19, 1952, ch. 950, 66 Stat. 793; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 4 (R.S. 480).

The language is revised and inability to apply for a patent, included in the original language, is made explicit.

The period of disability is increased to include one year after leaving the Office.

The further restriction, that no priority date earlier than one year after leaving the Office can be claimed, is added.

The one year period is made inapplicable to applications which may be pending when the revised title goes into effect by section 4(g) of the bill.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

§ 5. Patent and Trademark Office Public Advisory Committees

(a) ESTABLISHMENT OF PUBLIC ADVISORY COMMITTEES.—

(1) APPOINTMENT.—The United States Patent and Trademark Office shall have a Patent Public Advisory Committee and a Trademark Public Advisory Committee, each of which shall have nine voting members who shall be appointed by the Secretary of Commerce and serve at the pleasure of the Secretary of Commerce. Members of each Public Advisory Committee shall be appointed for a term of 3 years, except that of the members first appointed, three shall be appointed for a term of 1 year, and three shall be appointed for a term of 2 years. In making appointments to each Committee, the Secretary of Commerce shall consider the risk of loss of competitive advantage in international commerce or other harm to United States companies as a result of such appointments.

(2) CHAIR.—The Secretary shall designate a chair of each Advisory Committee, whose term as chair shall be for 3 years.

(3) TIMING OF APPOINTMENTS.—Initial appointments to each Advisory Committee shall be made within 3 months after the effective date of the Patent and Trademark Office Efficiency Act. Vacancies shall be filled within 3 months after they occur.

(b) BASIS FOR APPOINTMENTS.—Members of each Advisory Committee—

(1) shall be citizens of the United States who shall be chosen so as to represent the interests of diverse users of the United States Patent and Trademark Office with respect to patents, in the case of the Patent Public Advisory Committee, and with respect to trademarks, in the case of the Trademark Public Advisory Committee;

(2) shall include members who represent small and large entity applicants located in the United States in proportion to the number of applications filed by such applicants, but in no case shall members who represent small entity patent applicants, including small business concerns, independent inventors, and non-profit organizations, constitute less than 25 percent of the members of the Patent Public Advisory Committee, and such members shall include at least one independent inventor; and

(3) shall include individuals with substantial background and achievement in finance, management, labor relations, science, technology, and office automation.

In addition to the voting members, each Advisory Committee shall include a representative of each labor organization recognized by the United States Patent and Trademark Office. Such representatives shall be nonvoting members of the Advisory Committee to which they are appointed.

(c) MEETINGS.—Each Advisory Committee shall meet at the call of the chair to consider an agenda set by the chair.

(d) DUTIES.—Each Advisory Committee shall—

(1) review the policies, goals, performance, budget, and user fees of the United States Patent and Trademark Office with respect to patents, in the case of the Patent Public Advisory Committee, and with respect to Trademarks, in the case of the Trademark Public Advisory Committee, and advise the Director on these matters;

(2) within 60 days after the end of each fiscal year—

(A) prepare an annual report on the matters referred to in paragraph (1);

(B) transmit the report to the Secretary of Commerce, the President, and the Committees on the Judiciary of the Senate and the House of Representatives; and

(C) publish the report in the Official Gazette of the United States Patent and Trademark Office.

(e) COMPENSATION.—Each member of each Advisory Committee shall be compensated for each day (including travel time) during which such member is attending meetings or conferences of that Advisory Committee or otherwise engaged in the business of that Advisory Committee, at the rate which is the daily equivalent of the annual rate of basic pay in effect for level III of the Executive Schedule under section 5314 of title 5. While away from such member's home or regular place of business such member shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5.

(f) ACCESS TO INFORMATION.—Members of each Advisory Committee shall be provided access to records and information in the United States Patent and Trademark Office, except for personnel or other privileged information and information concerning patent applications required to be kept in confidence by section 122.

(g) APPLICABILITY OF CERTAIN ETHICS LAWS.—Members of each Advisory Committee shall be special Government employees within the meaning of section 202 of title 18.

(h) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to each Advisory Committee.

(i) OPEN MEETINGS.—The meetings of each Advisory Committee shall be open to the public, except that each Advisory Committee may by majority vote meet in executive session when considering personnel, privileged, or other confidential information.

(j) INAPPLICABILITY OF PATENT PROHIBITION.—Section 4 shall not apply to voting members of the Advisory Committees.

(Added Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4714], Nov. 29, 1999, 113 Stat. 1536, 1501A-578; amended Pub. L. 107-273, div. C, title III, §§13203(b), 13206(a)(3), Nov. 2, 2002, 116 Stat. 1902, 1904.)

REFERENCES IN TEXT

For the effective date of the Patent and Trademark Office Efficiency Act, referred to in subsec. (a)(3), as 4 months after Nov. 29, 1999, see section 1009(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as an Effective Date of 1999 Amendment note under section 1 of this title.

The Federal Advisory Committee Act, referred to in subsec. (h), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 5, act July 19, 1952, ch. 950, 66 Stat. 793, related to bond of Commissioner and other officers, prior to repeal by Pub. L. 92-310, title II, §208(a), June 6, 1972, 86 Stat. 203.

AMENDMENTS

2002—Subsec. (e). Pub. L. 107-273, §13206(a)(3), struck out “, United States Code” after “title 5” in two places.

Subsec. (g). Pub. L. 107-273, §13206(a)(3), struck out “, United States Code” after “title 18”.

Subsec. (i). Pub. L. 107-273, §13203(b)(1), inserted “, privileged,” after “personnel”.

Subsec. (j). Pub. L. 107-273, §13203(b)(2), added subsec. (j).

EFFECTIVE DATE

Section effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as an Effective Date of 1999 Amendment note under section 1 of this title.

§ 6. Board of Patent Appeals and Interferences

(a) ESTABLISHMENT AND COMPOSITION.—There shall be in the United States Patent and Trademark Office a Board of Patent Appeals and Interferences. The Director, the Commissioner for Patents, the Commissioner for Trademarks, and the administrative patent judges shall constitute the Board. The administrative patent judges shall be persons of competent legal knowledge and scientific ability who are appointed by the Director.

(b) DUTIES.—The Board of Patent Appeals and Interferences shall, on written appeal of an applicant, review adverse decisions of examiners upon applications for patents and shall determine priority and patentability of invention in interferences declared under section 135(a). Each appeal and interference shall be heard by at least three members of the Board, who shall be designated by the Director. Only the Board of Patent Appeals and Interferences may grant rehearings.

(Added Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4717(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A-580; amended Pub. L. 107-273, div. C, title III, §13203(a)(2), Nov. 2, 2002, 116 Stat. 1902.)

PRIOR PROVISIONS

A prior section 6, acts July 19, 1952, ch. 950, 66 Stat. 793; Pub. L. 92-132, Oct. 5, 1971, 85 Stat. 364; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 94-131, §2, Nov. 14, 1975, 89 Stat. 690; Pub. L. 97-247, §§7, 13, Aug. 27, 1982, 96 Stat. 320, 321; Pub. L. 102-204, §8, Dec. 10, 1991, 105 Stat. 1641, related to duties of Commissioner, prior to repeal by Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §§4715(a), 4731], Nov. 29, 1999, 113 Stat. 1536, 1501A-580, 1501A-581, effective 4 months after Nov. 29, 1999.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-273, which directed amendment of subsec. (a) by inserting “the Deputy Commissioner,” after “Commissioner,” could not be executed because “Commissioner,” did not appear in subsec. (a).

EFFECTIVE DATE

Section effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out

as an Effective Date of 1999 Amendment note under section 1 of this title.

§ 7. Library

The Director shall maintain a library of scientific and other works and periodicals, both foreign and domestic, in the Patent and Trademark Office to aid the officers in the discharge of their duties.

(July 19, 1952, ch. 950, 66 Stat. 793, § 8; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; renumbered § 7 and amended Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, §§ 4717(1), 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-580, 1501A-582; Pub. L. 107-273, div. C, title III, § 13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 10 (R.S. 486).

Some change in language has been made. “Purchased” is changed to “maintained” to include the existing library and keeping it up by additions. The phrase “and other” is added to include legal works. The last phrase of the corresponding section of the existing statute is omitted as unnecessary.

PRIOR PROVISIONS

A prior section 7, acts July 19, 1952, ch. 950, 66 Stat. 793; Pub. L. 85-933, § 2, Sept. 6, 1958, 72 Stat. 1793; Pub. L. 86-370, § 1(b), Sept. 23, 1959, 73 Stat. 650; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 93-601, § 2, Jan. 2, 1975, 88 Stat. 1956; Pub. L. 98-622, title II, § 201(a), Nov. 8, 1984, 98 Stat. 3386, established the Board of Patent Appeals and Interferences, prior to repeal by Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, §§ 4717(1), 4731], Nov. 29, 1999, 113 Stat. 1536, 1501A-580, 1501A-581, effective 4 months after Nov. 29, 1999.

AMENDMENTS

2002—Pub. L. 107-273 made technical correction to directory language of Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)]. See 1999 Amendment note below.

1999—Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], as amended by Pub. L. 107-273, substituted “Director” for “Commissioner”.

Pub. L. 106-113, § 1000(a)(9) [title IV, § 4717(1)], renumbered section 8 of this title as this section.

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

§ 8. Classification of patents

The Director may revise and maintain the classification by subject matter of United States letters patent, and such other patents and printed publications as may be necessary or practicable, for the purpose of determining with readiness and accuracy the novelty of inventions for which applications for patent are filed.

(July 19, 1952, ch. 950, 66 Stat. 794, § 9; renumbered § 8 and amended Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, §§ 4717(1), 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-580, 1501A-582;

Pub. L. 107-273, div. C, title III, § 13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 6 note (June 10, 1898, ch. 430, § 1, 30 Stat. 440).

Changes in language are made.

PRIOR PROVISIONS

A prior section 8 was renumbered section 7 of this title.

AMENDMENTS

2002—Pub. L. 107-273 made technical correction to directory language of Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)]. See 1999 Amendment note below.

1999—Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], as amended by Pub. L. 107-273, substituted “Director” for “Commissioner”.

Pub. L. 106-113, § 1000(a)(9) [title IV, § 4717(1)], renumbered section 9 of this title as this section.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

§ 9. Certified copies of records

The Director may furnish certified copies of specifications and drawings of patents issued by the Patent and Trademark Office, and of other records available either to the public or to the person applying therefor.

(July 19, 1952, ch. 950, 66 Stat. 794, § 10; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; renumbered § 9 and amended Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, §§ 4717(1), 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-580, 1501A-582; Pub. L. 107-273, div. C, title III, § 13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 14 (Mar. 3, 1891, ch. 541, § 1 (part), 26 Stat. 908, 940).

Reference to other records is added. The fee for certification is omitted as it appears in the table of fees.

PRIOR PROVISIONS

A prior section 9 was renumbered section 8 of this title.

AMENDMENTS

2002—Pub. L. 107-273 made technical correction to directory language of Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)]. See 1999 Amendment note below.

1999—Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], as amended by Pub. L. 107-273, substituted “Director” for “Commissioner”.

Pub. L. 106-113, § 1000(a)(9) [title IV, § 4717(1)], renumbered section 10 of this title as this section.

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

§ 10. Publications

(a) The Director may publish in printed, type-written, or electronic form, the following:

1. Patents and published applications for patents, including specifications and drawings, together with copies of the same. The Patent and Trademark Office may print the headings of the drawings for patents for the purpose of lithography.

2. Certificates of trade-mark registrations, including statements and drawings, together with copies of the same.

3. The Official Gazette of the United States Patent and Trademark Office.

4. Annual indexes of patents and patentees, and of trade-marks and registrants.

5. Annual volumes of decisions in patent and trade-mark cases.

6. Pamphlet copies of the patent laws and rules of practice, laws and rules relating to trade-marks, and circulars or other publications relating to the business of the Office.

(b) The Director may exchange any of the publications specified in items 3, 4, 5, and 6 of subsection (a) of this section for publications desirable for the use of the Patent and Trademark Office.

(July 19, 1952, ch. 950, 66 Stat. 794, § 11; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; renumbered § 10 and amended Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, §§ 4507(1), 4717(1), 4732(a)(10)(A), 4804(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A-565, 1501A-580, 1501A-582, 1501A-589; Pub. L. 107-273, div. C, title III, §§ 13205(2)(A), 13206(b)(1)(B), (3)(A), Nov. 2, 2002, 116 Stat. 1903, 1906.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §§ 13 and 16 (R.S. 489; July 9, 1947, ch. 211, § 301 (part), 61 Stat. 299, repeated in prior and subsequent appropriation acts).

Section is amplified to list the publications of the Patent Office, based on 44 U.S.C., 1946 ed., §§ 283, 283a.

The second sentence of item 1 of the revised section is a provision appearing annually in appropriation acts to enable the Patent Office to maintain a small printing press to place headings on drawings before the drawings are reproduced.

Language is changed.

PRIOR PROVISIONS

A prior section 10 was renumbered section 9 of this title.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-273, § 13206(b)(3)(A), amended directory language of Pub. L. 106-113, § 1000(a)(9) [title IV, § 4804(b)]. See 1999 Amendment note below.

Subsec. (a)1. Pub. L. 107-273, § 13205(2)(A), made technical correction to directory language of Pub. L. 106-113, § 1000(a)(9) [title IV, § 4507(1)]. See 1999 Amendment note below.

Subsec. (b). Pub. L. 107-273, § 13206(b)(1)(B), made technical correction to directory language of Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)]. See 1999 Amendment note below.

1999—Pub. L. 106-113, § 1000(a)(9) [title IV, § 4717(1)], renumbered section 11 of this title as this section.

Subsec. (a). Pub. L. 106-113, § 1000(a)(9) [title IV, § 4804(b)], as amended by Pub. L. 107-273, § 13206(b)(3)(A), which directed the general amendment of the introductory provisions of subsec. (a) of section 10 of this title to read “The Director may publish in printed, type-written, or electronic form, the following:”, was executed to this section, which was section 11 of this title, to reflect the probable intent of Congress. This section

was subsequently renumbered section 10 of this title by Pub. L. 106-113, § 1000(a)(9) [title IV, § 4717(1)]. Prior to amendment, introductory provisions of subsec. (a) read as follows: “The Commissioner may print, or cause to be printed, the following:”. See note above and Effective Date of 1999 Amendment note below.

Subsec. (a)1. Pub. L. 106-113, § 1000(a)(9) [title IV, § 4507(1)], as amended by Pub. L. 107-273, § 13205(2)(A), inserted “and published applications for patents” after “Patents”.

Subsec. (b). Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], as amended by Pub. L. 107-273, § 13206(b)(1)(B), substituted “Director” for “Commissioner”.

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”, wherever appearing.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4508], Nov. 29, 1999, 113 Stat. 1536, 1501A-566, as amended by Pub. L. 107-273, div. C, title III, § 13205(3), Nov. 2, 2002, 116 Stat. 1903, provided that: “Except as otherwise provided in this section, sections 4502 through 4504 and 4506 through 4507 [amending sections 10 to 12, 119, 120, 122, 135, 154, 181, 252, 284, and 374 of this title and enacting provisions set out as notes under sections 41 and 122 of this title], and the amendments made by such sections, shall be effective as of November 29, 2000, and shall apply only to applications (including international applications designating the United States) filed on or after that date. The amendments made by section 4504 [amending section 154 of this title] shall additionally apply to any pending application filed before November 29, 2000, if such pending application is published pursuant to a request of the applicant under such procedures as may be established by the Director. Except as otherwise provided in this section, the amendments made by section 4505 [amending section 102 of this title] shall be effective as of November 29, 2000 and shall apply to all patents and all applications for patents pending on or filed after November 29, 2000. Patents resulting from an international application filed before November 29, 2000 and applications published pursuant to section 122(b) [probably means section 122(b) of title 35] or Article 21(2) of the treaty defined in section 351(a) [probably means section 351(a) of title 35] resulting from an international application filed before November 29, 2000 shall not be effective as prior art as of the filing date of the international application; however, such patents shall be effective as prior art in accordance with section 102(e) in effect on November 28, 2000.”

Amendment by section 1000(a)(9) [title IV, § 4717(1), 4732(a)(10)(A)] of Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

§ 11. Exchange of copies of patents and applications with foreign countries

The Director may exchange copies of specifications and drawings of United States patents and published applications for patents for those of foreign countries. The Director shall not enter into an agreement to provide such copies of specifications and drawings of United States patents and applications to a foreign country, other than a NAFTA country or a WTO member country, without the express authorization of the Secretary of Commerce. For purposes of this section, the terms “NAFTA country” and “WTO member country” have the meanings given those terms in section 104(b).

(July 19, 1952, ch. 950, 66 Stat. 794, §12; renumbered §11 and amended Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §§4507(2), 4717(1), 4732(a)(10)(A), 4808], Nov. 29, 1999, 113 Stat. 1536, 1501A–565, 1501A–580, 1501A–582, 1501A–591; Pub. L. 107–273, div. C, title III, §§13205(2)(B), 13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1903, 1906.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §§15, and 78, part (Jan. 14, 1915, 38 Stat. 1221; Feb. 18, 1922, ch. 58, §9, proviso in, 42 Stat. 393).

The first act mentioned applies to Canada only, the second to any country; these are consolidated in one section, specific reference to one country not being necessary.

Language is changed.

PRIOR PROVISIONS

A prior section 11 was renumbered section 10 of this title.

AMENDMENTS

2002—Pub. L. 107–273, §13206(b)(1)(B), made technical correction to directory language of Pub. L. 106–113, §1000(a)(9) [title IV, §4732(a)(10)(A)]. See 1999 Amendment note below.

Pub. L. 107–273, §13205(2)(B), made technical correction to directory language of Pub. L. 106–113, §1000(a)(9) [title IV, §4507(2)]. See 1999 Amendment note below.

1999—Pub. L. 106–113, §1000(a)(9) [title IV, §4808], inserted at end “The Director shall not enter into an agreement to provide such copies of specifications and drawings of United States patents and applications to a foreign country, other than a NAFTA country or a WTO member country, without the express authorization of the Secretary of Commerce. For purposes of this section, the terms ‘NAFTA country’ and ‘WTO member country’ have the meanings given those terms in section 104(b).”

Pub. L. 106–113, §1000(a)(9) [title IV, §4732(a)(10)(A)], as amended by Pub. L. 107–273, §13206(b)(1)(B), substituted “Director” for “Commissioner”.

Pub. L. 106–113, §1000(a)(9) [title IV, §4717(1)], renumbered section 12 of this title as this section.

Pub. L. 106–113, §1000(a)(9) [title IV, §4507(2)], as amended by Pub. L. 107–273, §13205(2)(B), inserted “and applications” after “patents” in section catchline and “and published applications for patents” after “patents” in text.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(9) [title IV, §4507(2)] of Pub. L. 106–113 effective Nov. 29, 2000, and applicable only to applications (including international applications designating the United States) filed on or after that date, see section 1000(a)(9) [title IV, §4508] of Pub. L. 106–113, as amended, set out as a note under section 10 of this title.

Amendment by section 1000(a)(9) [title IV, §§4717(1), 4732(a)(10)(A)] of Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of this title.

§ 12. Copies of patents and applications for public libraries

The Director may supply copies of specifications and drawings of patents and published applications for patents in printed or electronic form to public libraries in the United States which shall maintain such copies for the use of the public, at the rate for each year’s issue established for this purpose in section 41(d) of this title.

(July 19, 1952, ch. 950, 66 Stat. 794, §13; Pub. L. 97–247, §15, Aug. 27, 1982, 96 Stat. 321; renumbered

§12 and amended Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §§4507(3), 4717(1), 4732(a)(10)(A), 4804(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–565, 1501A–580, 1501A–582, 1501A–589; Pub. L. 107–273, div. C, title III, §§13205(2)(C), 13206(b)(1)(B), (3)(B), Nov. 2, 2002, 116 Stat. 1903, 1906.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §78, part (R.S. 4934, Feb. 18, 1922, ch. 58, §9, 42 Stat. 389, 393, amended June 15, 1950, ch. 249, 64 Stat. 215).

The proviso in the schedule of fees of the existing statute is made a separate section and some changes in language are made.

PRIOR PROVISIONS

A prior section 12 was renumbered section 11 of this title.

AMENDMENTS

2002—Pub. L. 107–273, §13206(b)(3)(B), amended directory language of Pub. L. 106–113, §1000(a)(9) [title IV, §4804(c)]. See 1999 Amendment note below.

Pub. L. 107–273, §13206(b)(1)(B), made technical correction to directory language of Pub. L. 106–113, §1000(a)(9) [title IV, §4732(a)(10)(A)]. See 1999 Amendment note below.

Pub. L. 107–273, §13205(2)(C), made technical correction to directory language of Pub. L. 106–113, §1000(a)(9) [title IV, §4507(3)]. See 1999 Amendment note below.

1999—Pub. L. 106–113, §1000(a)(9) [title IV, §4804(c)], as amended by Pub. L. 107–273, §13206(b)(3)(B), which directed amendment of section 12 of this title by substituting “copies of specifications and drawings of patents in printed or electronic form” for “printed copies of specifications and drawings of patents”, was executed to this section, which was section 13 of this title, to reflect the probable intent of Congress. This section was subsequently renumbered section 12 of this title by Pub. L. 106–113, §1000(a)(9) [title IV, §4717(1)]. See note above and Effective Date of 1999 Amendment note below.

Pub. L. 106–113, §1000(a)(9) [title IV, §4732(a)(10)(A)], as amended by Pub. L. 107–273, §13206(b)(1)(B), substituted “Director” for “Commissioner”.

Pub. L. 106–113, §1000(a)(9) [title IV, §4717(1)], renumbered section 13 of this title as this section.

Pub. L. 106–113, §1000(a)(9) [title IV, §4507(3)], as amended by Pub. L. 107–273, §13205(2)(C), inserted “and applications” after “patents” in section catchline and “and published applications for patents” after “patents” in text.

1982—Pub. L. 97–247 substituted “section 41(d)” for “section 41(a)9”.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(9) [title IV, §4507(3)] of Pub. L. 106–113 effective Nov. 29, 2000, and applicable only to applications (including international applications designating the United States) filed on or after that date, see section 1000(a)(9) [title IV, §4508] of Pub. L. 106–113, as amended, set out as a note under section 10 of this title.

Amendment by section 1000(a)(9) [title IV, §§4717(1), 4732(a)(10)(A)] of Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–247 effective Aug. 27, 1982, see section 17(a) of Pub. L. 97–247, set out as a note under section 41 of this title.

§ 13. Annual report to Congress

The Director shall report to the Congress, not later than 180 days after the end of each fiscal

year, the moneys received and expended by the Office, the purposes for which the moneys were spent, the quality and quantity of the work of the Office, the nature of training provided to examiners, the evaluation of the Commissioner of Patents and the Commissioner of Trademarks by the Secretary of Commerce, the compensation of the Commissioners, and other information relating to the Office.

(July 19, 1952, ch. 950, 66 Stat. 794, §14; renumbered §13 and amended Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §§4717(1), 4718], Nov. 29, 1999, 113 Stat. 1536, 1501A–580, 1501A–581.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §20 (R.S. 494).

Language is changed. The lists referred to in the corresponding section of existing statute, and which are omitted from the revised section, are the indexes provided for in section 11(a)4. The month of reporting is omitted. The report contemplated by R.S. 494 has been discontinued since 1925 under authority of 44 U.S.C., 1946 ed., §212.

PRIOR PROVISIONS

A prior section 13 was renumbered section 12 of this title.

AMENDMENTS

1999—Pub. L. 106–113 renumbered section 14 of this title as this section and amended section catchline and text generally. Prior to amendment, text read as follows: “The Commissioner shall report to Congress annually the moneys received and expended, statistics concerning the work of the Office, and other information relating to the Office as may be useful to the Congress or the public.”

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of this title.

REPORT TO CONGRESS

Pub. L. 100–703, title I, §103(c), Nov. 19, 1988, 102 Stat. 4674, provided that: “The Secretary of Commerce shall, on the day on which the President submits the annual budget to the Congress, provide to the Committees on the Judiciary of the Senate and the House of Representatives—

“(1) a list of patent and trademark fee collections by the Patent and Trademark Office during the preceding fiscal year;

“(2) a list of activities of the Patent and Trademark Office during the preceding fiscal year which were supported by patent fee expenditures, trademark fee expenditures, and appropriations;

“(3) budget plans for significant programs, projects, and activities of the Office, including out-year funding estimates;

“(4) any proposed disposition of surplus fees by the Office; and

“(5) such other information as the committees consider necessary.”

Similar provisions were contained in the following prior authorization act:

Pub. L. 99–607, §3(c), Nov. 6, 1986, 100 Stat. 3471.

COMPUTERIZED DATA AND RETRIEVAL SYSTEM; REPORT TO CONGRESS

Pub. L. 96–517, §9, Dec. 12, 1980, 94 Stat. 3028, directed the Commissioner of Patents and Trademarks to report to Congress, within two years after Dec. 12, 1980, a plan to identify, and if necessary develop or have developed, computerized data and retrieval systems equivalent to

the latest state of the art which could be applied to all aspects of the operation of the Patent and Trademark Office, and particularly to the patent search file, the patent classification system, and the trademark search file. The report was to specify the cost of implementing the plan, and how rapidly the plan could be implemented by the Patent and Trademark Office, without regard to the availability of future funding.

[§ 14. Renumbered § 13]

CHAPTER 2—PROCEEDINGS IN THE PATENT AND TRADEMARK OFFICE

Sec.

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| 21. | Filing date and day for taking action. |
| 22. | Printing of papers filed. |
| 23. | Testimony in Patent and Trademark Office cases. |
| 24. | Subpoenas, witnesses. |
| 25. | Declaration in lieu of oath. |
| 26. | Effect of defective execution. |

AMENDMENTS

2002—Pub. L. 107–273, div. C, title III, §13206(a)(5), Nov. 2, 2002, 116 Stat. 1904, substituted “Filing date and day for taking action” for “Day for taking action falling on Saturday, Sunday, or holiday” in item 21.

1975—Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949, substituted “Patent and Trademark Office” for “Patent Office” in chapter heading and in item 23.

1964—Pub. L. 88–292, §2, Mar. 26, 1964, 78 Stat. 171, added items 25 and 26.

§ 21. Filing date and day for taking action

(a) The Director may by rule prescribe that any paper or fee required to be filed in the Patent and Trademark Office will be considered filed in the Office on the date on which it was deposited with the United States Postal Service or would have been deposited with the United States Postal Service but for postal service interruptions or emergencies designated by the Director.

(b) When the day, or the last day, for taking any action or paying any fee in the United States Patent and Trademark Office falls on Saturday, Sunday, or a Federal holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding secular or business day.

(July 19, 1952, ch. 950, 66 Stat. 794; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 97–247, §12, Aug. 27, 1982, 96 Stat. 321; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A–582; Pub. L. 107–273, div. C, title III, §13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §21 (Mar. 2, 1927, ch. 273, §14, 44 Stat. 1337).

“Fixed by statute” is omitted from the corresponding section of the existing statute as unnecessary. Saturday is added as a day on which action need not be taken.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–273 made technical correction to directory language of Pub. L. 106–113. See 1999 Amendment note below.

1999—Subsec. (a). Pub. L. 106–113, as amended by Pub. L. 107–273, substituted “Director” for “Commissioner” in two places.

1982—Pub. L. 97–247 substituted “Filing date and day for taking action” for “Day for taking action falling on

Saturday, Sunday, or holiday” as section catchline, added subsec. (a), redesignated existing provisions as subsec. (b) and inserted “Federal” after “Sunday, or a”.

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-247 effective six months after Aug. 27, 1982, see section 17(c) of Pub. L. 97-247, set out as an Effective Date note under section 294 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

EMERGENCY RELIEF FROM POSTAL SITUATION AFFECTING PATENT CASES

Relief as to filing date of patent application or patent and excusal of delayed fees or actions affected by postal situation beginning on Mar. 18, 1970, and ending on or about Mar. 30, 1970, see note set out under section 111 of this title.

§ 22. Printing of papers filed

The Director may require papers filed in the Patent and Trademark Office to be printed, typewritten, or on an electronic medium.

(July 19, 1952, ch. 950, 66 Stat. 795; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, §§ 4732(a)(10)(A), 4804(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A-582, 1501A-589; Pub. L. 107-273, div. C, title III, § 13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 12 (R.S. 488).
Language is changed and “or typewritten” is added after “printed”.

AMENDMENTS

2002—Pub. L. 107-273 made technical correction to directory language of Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)]. See 1999 Amendment note below.

1999—Pub. L. 106-113, § 1000(a)(9) [title IV, § 4804(a)], substituted “printed, typewritten, or on an electronic medium” for “printed or typewritten”.

Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], as amended by Pub. L. 107-273, substituted “Director” for “Commissioner”.

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(9) [title IV, § 4732(a)(10)(A)] of Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

§ 23. Testimony in Patent and Trademark Office cases

The Director may establish rules for taking affidavits and depositions required in cases in

the Patent and Trademark Office. Any officer authorized by law to take depositions to be used in the courts of the United States, or of the State where he resides, may take such affidavits and depositions.

(July 19, 1952, ch. 950, 66 Stat. 795; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-582; Pub. L. 107-273, div. C, title III, § 13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 53 (R.S. 4905).

This section is placed in part 1 since it relates to trade-mark cases in the Patent Office as well as to patent cases.

Language is changed.

AMENDMENTS

2002—Pub. L. 107-273 made technical correction to directory language of Pub. L. 106-113. See 1999 Amendment note below.

1999—Pub. L. 106-113, as amended by Pub. L. 107-273, substituted “Director” for “Commissioner”.

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office” in section catchline and text.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

§ 24. Subpoenas, witnesses

The clerk of any United States court for the district wherein testimony is to be taken for use in any contested case in the Patent and Trademark Office, shall, upon the application of any party thereto, issue a subpoena for any witness residing or being within such district, commanding him to appear and testify before an officer in such district authorized to take depositions and affidavits, at the time and place stated in the subpoena. The provisions of the Federal Rules of Civil Procedure relating to the attendance of witnesses and to the production of documents and things shall apply to contested cases in the Patent and Trademark Office.

Every witness subpoenaed and in attendance shall be allowed the fees and traveling expenses allowed to witnesses attending the United States district courts.

A judge of a court whose clerk issued a subpoena may enforce obedience to the process or punish disobedience as in other like cases, on proof that a witness, served with such subpoena, neglected or refused to appear or to testify. No witness shall be deemed guilty of contempt for disobeying such subpoena unless his fees and traveling expenses in going to, and returning from, and one day's attendance at the place of examination, are paid or tendered him at the time of the service of the subpoena; nor for refusing to disclose any secret matter except upon appropriate order of the court which issued the subpoena.

(July 19, 1952, ch. 950, 66 Stat. 795; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §§ 54, 55 and 56 (R.S. 4906, amended Feb. 18, 1922, ch. 58, § 7, 42 Stat. 389, 391-2; R.S. 4907; R.S. 4908).

Three sections of the existing statute are combined with some changes in language and placed in part 1 since they apply to trade-mark cases in the Patent Office as well as to patent cases. Reference to a repealed statute in the first paragraph is replaced by reference to the Federal Rules of Civil Procedure and certain rules are made applicable.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1975—Pub. L. 93-596 substituted “Patent and Trade-mark Office” for “Patent Office” in two places.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

§ 25. Declaration in lieu of oath

(a) The Director may by rule prescribe that any document to be filed in the Patent and Trademark Office and which is required by any law, rule, or other regulation to be under oath may be subscribed to by a written declaration in such form as the Director may prescribe, such declaration to be in lieu of the oath otherwise required.

(b) Whenever such written declaration is used, the document must warn the declarant that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001).

(Added Pub. L. 88-292, § 1, Mar. 26, 1964, 78 Stat. 171; amended Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-582; Pub. L. 107-273, div. C, title III, § 13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-273 made technical correction to directory language of Pub. L. 106-113. See 1999 Amendment note below.

1999—Subsec. (a). Pub. L. 106-113, as amended by Pub. L. 107-273, substituted “Director” for “Commissioner” in two places.

1975—Subsec. (a). Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

§ 26. Effect of defective execution

Any document to be filed in the Patent and Trademark Office and which is required by any

law, rule, or other regulation to be executed in a specified manner may be provisionally accepted by the Director despite a defective execution, provided a properly executed document is submitted within such time as may be prescribed.

(Added Pub. L. 88-292, § 1, Mar. 26, 1964, 78 Stat. 171; amended Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-582; Pub. L. 107-273, div. C, title III, § 13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906.)

AMENDMENTS

2002—Pub. L. 107-273 made technical correction to directory language of Pub. L. 106-113. See 1999 Amendment note below.

1999—Pub. L. 106-113, as amended by Pub. L. 107-273, substituted “Director” for “Commissioner”.

1975—Pub. L. 93-596 substituted “Patent and Trade-mark Office” for “Patent Office”.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

CHAPTER 3—PRACTICE BEFORE PATENT AND TRADEMARK OFFICE

Sec.

[31. Repealed.]

32. Suspension or exclusion from practice.

33. Unauthorized representation as practitioner.

AMENDMENTS

1999—Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4715(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A-580, struck out item 31 “Regulations for agents and attorneys”.

1975—Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949, substituted “PATENT AND TRADEMARK OFFICE” for “PATENT OFFICE” in chapter heading.

[§ 31. Repealed. Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4715(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A-580]

Section, acts July 19, 1952, ch. 950, 66 Stat. 795; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949, authorized the Commissioner to prescribe regulations for agents and attorneys.

EFFECTIVE DATE OF REPEAL

Repeal effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as an Effective Date of 1999 Amendment note under section 1 of this title.

§ 32. Suspension or exclusion from practice

The Director may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before the Patent and Trademark Office, any person, agent, or attorney shown to be incompetent or disreputable, or guilty of gross misconduct, or who does not comply with the regulations established under section 2(b)(2)(D) of this title, or who shall, by word, circular, letter, or advertising, with intent to defraud in any manner, deceive, mislead, or threaten any appli-

cant or prospective applicant, or other person having immediate or prospective business before the Office. The reasons for any such suspension or exclusion shall be duly recorded. The Director shall have the discretion to designate any attorney who is an officer or employee of the United States Patent and Trademark Office to conduct the hearing required by this section. The United States District Court for the District of Columbia, under such conditions and upon such proceedings as it by its rules determines, may review the action of the Director upon the petition of the person so refused recognition or so suspended or excluded.

(July 19, 1952, ch. 950, 66 Stat. 795; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, §§ 4715(c), 4719, 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-580 to 1501A-582; Pub. L. 107-273, div. C, title III, § 13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 11 (R.S. 487, amended Feb. 18, 1922, ch. 58, § 3, 42 Stat. 390).
See note under section 31.

AMENDMENTS

2002—Pub. L. 107-273 made technical correction to directory language of Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)]. See 1999 Amendment note below.

1999—Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], as amended by Pub. L. 107-273, substituted “Director” for “Commissioner” in first and last sentences.

Pub. L. 106-113, § 1000(a)(9) [title IV, § 4719], inserted before last sentence “The Director shall have the discretion to designate any attorney who is an officer or employee of the United States Patent and Trademark Office to conduct the hearing required by this section.”

Pub. L. 106-113, § 1000(a)(9) [title IV, § 4715(c)], substituted “2(b)(2)(D)” for “31”.

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

§ 33. Unauthorized representation as practitioner

Whoever, not being recognized to practice before the Patent and Trademark Office, holds himself out or permits himself to be held out as so recognized, or as being qualified to prepare or prosecute applications for patent, shall be fined not more than \$1,000 for each offense.

(July 19, 1952, ch. 950, 66 Stat. 796; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 11a (May 9, 1938, ch. 188, 52 Stat. 342).

This is a criminal statute. The language has been considerably simplified and the upper limit of the penalty is increased.

AMENDMENTS

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

CHAPTER 4—PATENT FEES; FUNDING; SEARCH SYSTEMS

Sec.

- 41. Patent fees; patent and trademark search systems.
- 42. Patent and Trademark Office funding.

AMENDMENTS

1991—Pub. L. 102-204, § 5(d)(2)(B), (C), Dec. 10, 1991, 105 Stat. 1640, inserted “; FUNDING; SEARCH SYSTEMS” after “FEES” in chapter heading, inserted “; patent and trademark search systems” after “fees” in item 41, and substituted “Patent and Trademark Office funding” for “Payment of patent fees; return of excess amounts” in item 42.

§ 41. Patent fees; patent and trademark search systems

(a) The Director shall charge the following fees:

(1)(A) On filing each application for an original patent, except in design or plant cases, \$690.

(B) In addition, on filing or on presentation at any other time, \$78 for each claim in independent form which is in excess of 3, \$18 for each claim (whether independent or dependent) which is in excess of 20, and \$260 for each application containing a multiple dependent claim.

(C) On filing each provisional application for an original patent, \$150.

(2) For issuing each original or reissue patent, except in design or plant cases, \$1,210.

(3) In design and plant cases—

- (A) on filing each design application, \$310;
- (B) on filing each plant application, \$480;
- (C) on issuing each design patent, \$430; and
- (D) on issuing each plant patent, \$580.

(4)(A) On filing each application for the reissue of a patent, \$690.

(B) In addition, on filing or on presentation at any other time, \$78 for each claim in independent form which is in excess of the number of independent claims of the original patent, and \$18 for each claim (whether independent or dependent) which is in excess of 20 and also in excess of the number of claims of the original patent.

(5) On filing each disclaimer, \$110.

(6)(A) On filing an appeal from the examiner to the Board of Patent Appeals and Interferences, \$300.

(B) In addition, on filing a brief in support of the appeal, \$300, and on requesting an oral hearing in the appeal before the Board of Patent Appeals and Interferences, \$260.

(7) On filing each petition for the revival of an unintentionally abandoned application for a patent, for the unintentionally delayed payment of the fee for issuing each patent, or for an unintentionally delayed response by the patent owner in any reexamination proceeding, \$1,210, unless the petition is filed under section 133 or 151 of this title, in which case the fee shall be \$110.

(8) For petitions for 1-month extensions of time to take actions required by the Director in an application—

- (A) on filing a first petition, \$110;
- (B) on filing a second petition, \$270; and
- (C) on filing a third petition or subsequent petition, \$490.

(9) Basic national fee for an international application where the Patent and Trademark Office was the International Preliminary Examining Authority and the International Searching Authority, \$670.

(10) Basic national fee for an international application where the Patent and Trademark Office was the International Searching Authority but not the International Preliminary Examining Authority, \$690.

(11) Basic national fee for an international application where the Patent and Trademark Office was neither the International Searching Authority nor the International Preliminary Examining Authority, \$970.

(12) Basic national fee for an international application where the international preliminary examination fee has been paid to the Patent and Trademark Office, and the international preliminary examination report states that the provisions of Article 33(2), (3), and (4) of the Patent Cooperation Treaty have been satisfied for all claims in the application entering the national stage, \$96.

(13) For filing or later presentation of each independent claim in the national stage of an international application in excess of 3, \$78.

(14) For filing or later presentation of each claim (whether independent or dependent) in a national stage of an international application in excess of 20, \$18.

(15) For each national stage of an international application containing a multiple dependent claim, \$260.

For the purpose of computing fees, a multiple dependent claim referred to in section 112 of this title or any claim depending therefrom shall be considered as separate dependent claims in accordance with the number of claims to which reference is made. Errors in payment of the additional fees may be rectified in accordance with regulations of the Director.

(b) The Director shall charge the following fees for maintaining in force all patents based on applications filed on or after December 12, 1980:

- (1) 3 years and 6 months after grant, \$830.
- (2) 7 years and 6 months after grant, \$1,900.
- (3) 11 years and 6 months after grant, \$2,910.

Unless payment of the applicable maintenance fee is received in the Patent and Trademark Office on or before the date the fee is due or within a grace period of 6 months thereafter, the patent will expire as of the end of such grace period. The Director may require the payment of a surcharge as a condition of accepting within such 6-month grace period the payment of an applicable maintenance fee. No fee may be established for maintaining a design or plant patent in force.

(c)(1) The Director may accept the payment of any maintenance fee required by subsection (b) of this section which is made within twenty-four

months after the six-month grace period if the delay is shown to the satisfaction of the Director to have been unintentional, or at any time after the six-month grace period if the delay is shown to the satisfaction of the Director to have been unavoidable. The Director may require the payment of a surcharge as a condition of accepting payment of any maintenance fee after the six-month grace period. If the Director accepts payment of a maintenance fee after the six-month grace period, the patent shall be considered as not having expired at the end of the grace period.

(2) A patent, the term of which has been maintained as a result of the acceptance of a payment of a maintenance fee under this subsection, shall not abridge or affect the right of any person or that person's successors in business who made, purchased, offered to sell, or used anything protected by the patent within the United States, or imported anything protected by the patent into the United States after the 6-month grace period but prior to the acceptance of a maintenance fee under this subsection, to continue the use of, to offer for sale, or to sell to others to be used, offered for sale, or sold, the specific thing so made, purchased, offered for sale, used, or imported. The court before which such matter is in question may provide for the continued manufacture, use, offer for sale, or sale of the thing made, purchased, offered for sale, or used within the United States, or imported into the United States, as specified, or for the manufacture, use, offer for sale, or sale in the United States of which substantial preparation was made after the 6-month grace period but before the acceptance of a maintenance fee under this subsection, and the court may also provide for the continued practice of any process that is practiced, or for the practice of which substantial preparation was made, after the 6-month grace period but before the acceptance of a maintenance fee under this subsection, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced after the 6-month grace period but before the acceptance of a maintenance fee under this subsection.

(d) The Director shall establish fees for all other processing, services, or materials relating to patents not specified in this section to recover the estimated average cost to the Office of such processing, services, or materials, except that the Director shall charge the following fees for the following services:

- (1) For recording a document affecting title, \$40 per property.
- (2) For each photocopy, \$.25 per page.
- (3) For each black and white copy of a patent, \$3.

The yearly fee for providing a library specified in section 13¹ of this title with uncertified printed copies of the specifications and drawings for all patents in that year shall be \$50.

(e) The Director may waive the payment of any fee for any service or material related to patents in connection with an occasional or incidental request made by a department or agen-

¹ See References in Text note below.

cy of the Government, or any officer thereof. The Director may provide any applicant issued a notice under section 132 of this title with a copy of the specifications and drawings for all patents referred to in that notice without charge.

(f) The fees established in subsections (a) and (b) of this section may be adjusted by the Director on October 1, 1992, and every year thereafter, to reflect any fluctuations occurring during the previous 12 months in the Consumer Price Index, as determined by the Secretary of Labor. Changes of less than 1 per centum may be ignored.

(g) No fee established by the Director under this section shall take effect until at least 30 days after notice of the fee has been published in the Federal Register and in the Official Gazette of the Patent and Trademark Office.

(h)(1) Fees charged under subsection (a) or (b) shall be reduced by 50 percent with respect to their application to any small business concern as defined under section 3 of the Small Business Act, and to any independent inventor or non-profit organization as defined in regulations issued by the Director.

(2) With respect to its application to any entity described in paragraph (1), any surcharge or fee charged under subsection (c) or (d) shall not be higher than the surcharge or fee required of any other entity under the same or substantially similar circumstances.

(i)(1) The Director shall maintain, for use by the public, paper, microform, or electronic collections of United States patents, foreign patent documents, and United States trademark registrations arranged to permit search for and retrieval of information. The Director may not impose fees directly for the use of such collections, or for the use of the public patent or trademark search rooms or libraries.

(2) The Director shall provide for the full deployment of the automated search systems of the Patent and Trademark Office so that such systems are available for use by the public, and shall assure full access by the public to, and dissemination of, patent and trademark information, using a variety of automated methods, including electronic bulletin boards and remote access by users to mass storage and retrieval systems.

(3) The Director may establish reasonable fees for access by the public to the automated search systems of the Patent and Trademark Office. If such fees are established, a limited amount of free access shall be made available to users of the systems for purposes of education and training. The Director may waive the payment by an individual of fees authorized by this subsection upon a showing of need or hardship, and if such a waiver is in the public interest.

(4) The Director shall submit to the Congress an annual report on the automated search systems of the Patent and Trademark Office and the access by the public to such systems. The Director shall also publish such report in the Federal Register. The Director shall provide an opportunity for the submission of comments by interested persons on each such report.

(July 19, 1952, ch. 950, 66 Stat. 796; Pub. L. 89-83, §§1, 2, July 24, 1965, 79 Stat. 259; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 94-131, §3,

Nov. 14, 1975, 89 Stat. 690; Pub. L. 96-517, §2, Dec. 12, 1980, 94 Stat. 3017; Pub. L. 97-247, §3(a)-(e), Aug. 27, 1982, 96 Stat. 317-319; Pub. L. 97-256, title I, §101(1)-(4), Sept. 8, 1982, 96 Stat. 816; Pub. L. 98-622, title II, §204(a), Nov. 8, 1984, 98 Stat. 3388; Pub. L. 99-607, §1(b)(2), Nov. 6, 1986, 100 Stat. 3470; Pub. L. 102-204, §5(a)-(c)(1), (d)(1), (2)(A), Dec. 10, 1991, 105 Stat. 1637-1639; Pub. L. 102-444, §1, Oct. 23, 1992, 106 Stat. 2245; Pub. L. 103-465, title V, §§532(b)(2), 533(b)(1), Dec. 8, 1994, 108 Stat. 4986, 4988; Pub. L. 105-358, §3, Nov. 10, 1998, 112 Stat. 3272; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §§4202, 4605(a), 4732(a)(5), (10)(A), 4804(d)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A-554, 1501A-570, 1501A-582, 1501A-589; Pub. L. 107-273, div. C, title III, §13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §78 (R.S. 4934, amended (1) May 27, 1908, ch. 200, §1 (part), 35 Stat. 317, 343; (2) June 25, 1910, ch. 414, §2, 35 Stat. 843; (3) Feb. 18, 1922, ch. 58, §9, 42 Stat. 389, 393; (4) Feb. 14, 1927, ch. 139, §2, 44 Stat. 1098, 1099; (5) Mar. 2, 1927, ch. 273, §13, 44 Stat. 1335, 1337; (6) April 11, 1930, ch. 132, §3, 46 Stat. 155; (7) June 30, 1932, ch. 314, §§308, 309, 47 Stat. 382, 410; (8) Aug. 9, 1939, ch. 619, §3, 53 Stat. 1293; July 5, 1946, ch. 541, §301 (part), 60 Stat. 446, 471).

The items in the schedule of fees are rearranged in a few instances and are numbered for convenient reference.

The obsolete fee for appeal from the examiners of interferences to the Board of Appeals is omitted.

The fee for appeal to the Board of Appeals is changed from \$15 to \$25.

Two provisos in the corresponding section of the existing statute have been made separate sections, see sections 12 and 13.

The fee for a certificate is changed from 50 cents to \$1 to correspond to the same fee in the trade-mark statute.

A new item (8) is added to go with section 205.

An omnibus item to take care of miscellaneous minor fees is added; in view of this, two items in the present schedule are omitted.

The fee for reissue applications is changed slightly.

REFERENCES IN TEXT

Section 13 of this title, referred to in subsec. (d), was renumbered section 12 of this title by Pub. L. 106-113, §1000(a)(9) [title IV, §4717(1)], Nov. 29, 1999, 113 Stat. 1501A-536, 1501A-580.

Section 3 of the Small Business Act, referred to in subsec. (h)(1), is classified to section 632 of Title 15, Commerce and Trade.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-273 made technical correction to directory language of Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)]. See 1999 Amendment note below.

1999—Subsec. (a). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)], as amended by Pub. L. 107-273, substituted "Director" for "Commissioner" in introductory and concluding provisions.

Subsec. (a)(1)(A), (4)(A). Pub. L. 106-113, §1000(a)(9) [title IV, §4202(a), (b)], substituted "\$690" for "\$760".

Subsec. (a)(7). Pub. L. 106-113, §1000(a)(9) [title IV, §4605(a)], amended par. (7) generally. Prior to amendment, par. (7) read as follows: "On filing each petition for the revival of an unintentionally abandoned application for a patent or for the unintentionally delayed payment of the fee for issuing each patent, \$1,210, unless the petition is filed under section 133 or 151 of this title, in which case the fee shall be \$110."

Subsec. (a)(8). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)], substituted "Director" for "Commissioner" in introductory provisions.

Subsec. (a)(10). Pub. L. 106-113, §1000(a)(9) [title IV, §4202(c)], substituted “\$690” for “\$760”.

Subsec. (b). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)], substituted “Director” for “Commissioner” in introductory and concluding provisions.

Subsec. (b)(1). Pub. L. 106-113, §1000(a)(9) [title IV, §4202(d)], substituted “\$830” for “\$940”.

Subsecs. (c) to (g). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)], substituted “Director” for “Commissioner” wherever appearing.

Subsec. (h)(1). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(5)], substituted “Director” for “Commissioner of Patents and Trademarks”.

Subsec. (i)(1). Pub. L. 106-113, §1000(a)(9) [title IV, §4804(d)(1)], substituted “paper, microform, or electronic” for “paper or microform”.

Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)] substituted “Director” for “Commissioner” in two places.

Subsec. (i)(2) to (4). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)], substituted “Director” for “Commissioner” wherever appearing.

1998—Subsec. (a). Pub. L. 105-358, §3(a), added subsec. (a) and struck out former subsec. (a) which listed fees for patent services.

Subsec. (b). Pub. L. 105-358, §3(b), added subsec. (b) and struck out former subsec. (b) which read as follows: “The Commissioner shall charge the following fees for maintaining in force all patents based on applications filed on or after December 12, 1980:

“(1) 3 years and 6 months after grant, \$650.

“(2) 7 years and 6 months after grant, \$1,310.

“(3) 11 years and 6 months after grant, \$1,980.

Unless payment of the applicable maintenance fee is received in the Patent and Trademark Office on or before the date the fee is due or within a grace period of six months thereafter, the patent will expire as of the end of such grace period. The Commissioner may require the payment of a surcharge as a condition of accepting within such six-month grace period the late payment of an applicable maintenance fee. No fee will be established for maintaining a design or plant patent in force.”

1994—Subsec. (a)(1)(C). Pub. L. 103-465, §532(b)(2), added subpar. (C).

Subsec. (c)(2). Pub. L. 103-465, §533(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “No patent, the term of which has been maintained as a result of the acceptance of a payment of a maintenance fee under this subsection, shall abridge or affect the right of any person or his successors in business who made, purchased or used after the six-month grace period but prior to the acceptance of a maintenance fee under this subsection anything protected by the patent, to continue the use of, or to sell to others to be used or sold, the specific thing so made, purchased, or used. The court before which such matter is in question may provide for the continued manufacture, use or sale of the thing made, purchased, or used as specified, or for the manufacture, use or sale of which substantial preparation was made after the six-month grace period but before the acceptance of a maintenance fee under this subsection, and it may also provide for the continued practice of any process, practiced, or for the practice of which substantial preparation was made, after the six-month grace period but prior to the acceptance of a maintenance fee under this subsection, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced after the six-month grace period but before the acceptance of a maintenance fee under the subsection.”

1992—Subsec. (c)(1). Pub. L. 102-444 inserted after “section” in first sentence “which is made within twenty-four months after the six-month grace period if the delay is shown to the satisfaction of the Commissioner to have been unintentional, or at any time”.

1991—Pub. L. 102-204, §5(d)(2)(A), inserted “; patent and trademark search systems” after “fees” in section catchline.

Subsec. (a). Pub. L. 102-204, §5(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “The Commissioner shall charge the following fees:

“1. On filing each application for an original patent, except in design or plant cases, \$300; in addition, on filing or on presentation at any other time, \$30 for each claim in independent form which is in excess of three, \$10 for each claim (whether independent or dependent) which is in excess of twenty, and \$100 for each application containing a multiple dependent claim. For the purpose of computing fees, a multiple dependent claim as referred to in section 112 of this title or any claim depending therefrom shall be considered as separate dependent claims in accordance with the number of claims to which reference is made. Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioner.

“2. For issuing each original or reissue patent, except in design or plant cases, \$500.

“3. In design and plant cases:

“a. On filing each design application, \$125.

“b. On filing each plant application, \$200.

“c. On issuing each design patent, \$175.

“d. On issuing each plant patent, \$250.

“4. On filing each application for the reissue of a patent, \$300; in addition, on filing or on presentation at any other time, \$30 for each claim in independent form which is in excess of the number of independent claims of the original patent, and \$10 for each claim (whether independent or dependent) which is in excess of twenty and also in excess of the number of claims of the original patent. Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioner.

“5. On filing each disclaimer, \$50.

“6. On filing an appeal from the examiner to the Board of Patent Appeals and Interferences, \$115; in addition, on filing a brief in support of the appeal, \$115, and on requesting an oral hearing in the appeal before the Board of Patent Appeals and Interferences, \$100.

“7. On filing each petition for the revival of an unintentionally abandoned application for a patent or for the unintentionally delayed payment of the fee for issuing each patent, \$500, unless the petition is filed under sections 133 or 151 of this title, in which case the fee shall be \$50.

“8. For petitions for one-month extensions of time to take actions required by the Commissioner in an application:

“a. On filing a first petition, \$50.

“b. On filing a second petition, \$100.

“c. On filing a third or subsequent petition, \$200.”

Subsec. (b). Pub. L. 102-204, §5(a)(2), substituted “in force all patents based on applications filed on or after December 12, 1980:

“(1) 3 years and 6 months after grant, \$650.

“(2) 7 years and 6 months after grant, \$1,310.

“(3) 11 years and 6 months after grant, \$1,980.”

for “a patent in force:

“1. Three years and six months after grant, \$400.

“2. Seven years and six months after grant, \$800.

“3. Eleven years and six months after grant, \$1,200.”

Subsec. (d). Pub. L. 102-204, §5(a)(3), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “The Commissioner will establish fees for all other processing, services, or materials related to patents not specified above to recover the estimated average cost to the Office of such processing, services, or materials. The yearly fee for providing a library specified in section 13 of this title with uncertified printed copies of the specifications and drawings for all patents issued in that year will be \$50.”

Subsec. (f). Pub. L. 102-204, §5(b), substituted “on October 1, 1992, and every year thereafter, to reflect any fluctuations occurring during the previous 12 months” for “on October 1, 1985, and every third year thereafter, to reflect any fluctuations occurring during the previous three years”.

Subsec. (g). Pub. L. 102-204, §5(c)(1), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as

follows: “No fee established by the Commissioner under this section will take effect prior to sixty days following notice in the Federal Register.”

Subsec. (i). Pub. L. 102-204, §5(d)(1), added subsec. (i).
1986—Subsec. (h). Pub. L. 99-607 added subsec. (h).

1984—Subsec. (a)(6). Pub. L. 98-622 substituted “Patent Appeals and Interferences” for “Appeals” in two places and inserted “in the appeal” after “oral hearing”.

1982—Subsec. (a). Pub. L. 97-247, §3(a), substituted provisions setting a schedule of fees for provisions which had directed that the Commissioner establish fees for the processing of an application for a patent, from filing through disposition by issuance or abandonment, for maintaining a patent in force, and for providing all other services and materials related to patents and that fee would be established for maintaining a design patent in force.

Pub. L. 97-256, §101(1), struck out “of Patents” after “Commissioner”.

Subsec. (b). Pub. L. 97-247, §3(b), substituted provisions setting a fee schedule for maintaining a patent in force for provisions which had directed that, fees for the actual processing of an application for a patent, other than for a design patent, from filing through disposition by issuance or abandonment, were to recover in aggregate 25 per centum of the estimated average cost to the Office of such processing and that fees for the processing of an application for a design patent, from filing through disposition by issuance or abandonment, were to recover in aggregate 50 per centum of the estimated average cost to the Office of such processing.

Pub. L. 97-256, §101(2), substituted “October 1, 1982” for “the first day of the first fiscal year beginning on or after one calendar year after enactment of this Act” and “the first day of the first fiscal year beginning on or after one calendar year after enactment”.

Subsec. (c). Pub. L. 97-247, §3(c), substituted maintenance provisions for provisions which had directed that fees for maintaining patents in force were to recover 25 per centum of the estimated cost to the Office, for the year in which such maintenance fees were received, of the actual processing all applications for patents, other than for design patents, from filing through disposition by issuance or abandonment, that fees for maintaining a patent in force would be due three years and six months, seven years and six months, and eleven years and six months after the grant of the patent, that unless payment of the applicable maintenance fee was received in the Patent and Trademark Office on or before the date the fee was due or within a grace period of six months thereafter, the patent would expire as of the end of such grace period, and that the Commissioner could require the payment of a surcharge as a condition of accepting within such six-month grace period the late payment of an applicable maintenance fee.

Pub. L. 97-256, §101(3), substituted “October 1, 1996” for “the fifteenth fiscal year following the date of enactment of this Act”.

Subsec. (d). Pub. L. 97-247, §3(d), substituted provisions relating to fees for all other processing services or materials relating to patents not previously specified for provisions directing that fees for all other services or materials related to patents were to recover the estimated average cost to the Office of performing the service or furnishing the material.

Pub. L. 97-256, §101(4), substituted “October 1, 1982” for “the first day of the first fiscal year beginning on or after one calendar year after enactment”.

Subsec. (f). Pub. L. 97-247, §3(e), substituted provisions relating to the adjustment of fees to reflect CPI fluctuations for provisions directing that fees were to be adjusted by the Commissioner to achieve the levels of recovery specified in this section but that no patent application processing fee or fee for maintaining a patent in force was to be adjusted more than once every three years.

1980—Pub. L. 96-517 in revising fee provisions by substituting subsecs. (a) to (g) for prior subsecs. (a) to (c), required the Commissioner to establish fees based on

recovery of estimated average cost of processing applications, performing miscellaneous services and providing material, required fees for maintenance of patents in force and provided for expiration of patents for non-payments, prescribed \$50 library fee for copies of specifications and drawings, authorized triennial adjustments, prescribed effective date for fees, and incorporated in subsec. (e) waiver provision of former subsec. (c).

1975—Subsec. (a)1. Pub. L. 94-131 inserted sentence respecting consideration of a multiple dependent claim as referred to in section 112 of this title or any claim depending therefrom as separate dependent claims in accordance with the number of claims to which reference is made for the purpose of computing fees.

Subsec. (b). Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

1965—Subsec. (a)1. Pub. L. 89-83, §1, increased the filing fee for original patents from \$30 to \$65, changed the additional fee from \$1 for each claim in excess of twenty to \$10 for each claim in independent form which is in excess of one and \$2 for each claim (whether independent or dependent) which is in excess of ten, and permitted the rectification of errors in the payment of the additional fees in accordance with regulations of the Commissioner.

Subsec. (a)2. Pub. L. 89-83, §1, applied the issue fee to reissue patents as well as to original patents, increased such fee from \$30 to \$100, and changed the additional fee from \$1 for each claim in excess of twenty to \$10 for each page (or portion thereof) of specification as printed and \$2 for each sheet of drawing.

Subsec. (a)3. Pub. L. 89-83, §1, changed the fee structure applicable to design patents from a filing fee of \$10, \$15, or \$30 for terms of 3½, 7, or 14 years, respectively, to a filing fee of \$20 and an issue fee of \$10, \$20, or \$30 for terms of 3½, 7, or 14 years, respectively.

Subsec. (a)4. Pub. L. 89-83, §1, increased the filing fee for reissue patents from \$30 to \$65, changed the additional fee from \$1 for each claim in excess of twenty over and above the number of claims in the original patent to \$10 for each claim in independent form which is in excess of the number of independent claims of the original patent and \$2 for each claim (whether independent or dependent) which is in excess of ten and also in excess of the number of claims in the original patent, and permitted the rectification of errors in the payment of the additional fees in accordance with regulations of the Commissioner.

Subsec. (a)5. Pub. L. 89-83, §1, increased the fee for filing disclaimers from \$10 to \$15.

Subsec. (a)6. Pub. L. 89-83, §1, increased the fee on appeal for the first time from the examiner to the Board of Appeals from \$25 to \$50, and added the additional \$50 fee for filing a brief in support of the appeal.

Subsec. (a)7. Pub. L. 89-83, §1, increased the fee for filing a petition for the revival of an abandoned application or for the delayed payment of the issuance fee from \$10 to \$15.

Subsec. (a)8. Pub. L. 89-83, §1, inserted fee for the certificate under section 256 of this title, and increased the fee for a certificate under section 255 of this title from \$10 to \$15.

Subsec. (a)9. Pub. L. 89-83, §1, increased the fee for copies of specifications and drawings of patents (other than design patents) from 25 cents to 50 cents per copy and the fee for copies of specifications and drawings of design patents from 10 cents to 20 cents per copy, and permitted the Commissioner to establish a charge not to exceed \$1 per copy for patents in excess of twenty-five pages of drawings and specifications and for plant patents printed in color and to provide applicants, without charge, with copies of specifications and drawings when referred to in a section 132 notice.

Subsec. (a)10. Pub. L. 89-83, §1, changed the recording fee from \$3 for every document not exceeding six pages and \$1 for each additional two pages or less to a flat \$20 fee for every document, and substituted a \$3 fee for each additional item where the document relates to more than one patent or application for a 50 cents addi-

tional fee for each additional patent or application included in one writing where more than one is so included.

Subsec. (c). Pub. L. 89-83, § 2, added subsec. (c).

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, subtitle B, § 4206], Nov. 29, 1999, 113 Stat. 1536, 1501A-555, provided that:

“(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this subtitle [amending this section and section 42 of this title] shall take effect on the date of the enactment of this Act [Nov. 29, 1999].

“(b) SECTION 4202.—The amendments made by section 4202 [amending this section] of this subtitle shall take effect 30 days after the date of the enactment of this Act.”

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, subtitle F, § 4608], Nov. 29, 1999, 113 Stat. 1536, 1501A-572, provided that:

“(a) IN GENERAL.—Subject to subsection (b), this subtitle [enacting chapter 31 of this title, amending this section and sections 100, 134, 141, 143, and 145 of this title, and enacting provisions set out as notes under sections 1, 311, and 315 of this title] and the amendments made by this subtitle shall take effect on the date of the enactment of this Act [Nov. 29, 1999] and shall apply to any patent that issues from an original application filed in the United States on or after that date.

“(b) SECTION 4605(a).—The amendments made by section 4605(a) [amending this section] shall take effect on the date that is 1 year after the date of the enactment of this Act.”

Amendment by section 1000(a)(9) [title IV, §§ 4732(a)] of Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-358, § 5, Nov. 10, 1998, 112 Stat. 3274, provided that: “This Act [amending this section and section 42 of this title and enacting provisions set out as a note under section 1 of this title] and the amendments made by this Act shall take effect on October 1, 1998.”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 532(b)(2) of Pub. L. 103-465 effective 6 months after Dec. 8, 1994, and applicable to all patent applications filed in the United States on or after that effective date, with provisions relating to earliest filed patent application, see section 534(b)(1), (3) of Pub. L. 103-465, set out as a note under section 154 of this title.

Amendment by section 533(b)(1) of Pub. L. 103-465 effective on date that is one year after date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], with provisions relating to earliest filed patent application, see section 534(a), (b)(3) of Pub. L. 103-465, set out as a note under section 154 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 2 of Pub. L. 102-444 provided that: “The amendment made by section 1 [amending this section] shall take effect on the date of the enactment of this Act [Oct. 23, 1992].”

EFFECTIVE DATE OF 1991 AMENDMENT

Section 13 of Pub. L. 102-204 provided that: “This Act [amending this section, sections 6, 42, 202, 371, and 376 of this title, and section 1113 of Title 15, Commerce and Trade, enacting provisions set out as notes under this section, section 6 of this title, and section 1113 of Title 15, and amending and repealing provisions set out as notes under this section] takes effect on the date of the enactment of this Act [Dec. 10, 1991], except that the

fees established by the amendment made by section 5(a) [amending this section] shall take effect on or after 1 day after such fees are published in the Federal Register.”

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-622, title II, § 207, Nov. 8, 1984, 98 Stat. 3389, provided that: “Section 206 of this Act [98 Stat. 3388] and the amendments made by this title [amending this section, sections 7, 134, 135, 141, 145, 146, and 305 of this title, section 1295 of Title 28, Judiciary and Judicial Procedure, and sections 2182 and 2457 of Title 42, The Public Health and Welfare] shall take effect three months after the date of the enactment of this Act [Nov. 8, 1984].”

EFFECTIVE DATE OF 1982 AMENDMENT

Section 17(a) of Pub. L. 97-247 provided that: “Sections 1, 2, 4, 7, and 13 through 15 of this Act [amending sections 3, 6, 13, 115, and 261 of this title and section 1061 of Title 15, Commerce and Trade] shall take effect on the date of enactment of this Act [Aug. 27, 1982]. Sections 3 and 16 of this Act [amending this section, sections 42 and 173 of this title, and section 113 of Title 15] shall take effect on October 1, 1982. The maintenance fees provided for in section 3(b) of this Act [amending this section] shall not apply to patents applied for prior to the date of enactment of this Act. Each patent applied for on or after the date of enactment of this Act shall be subject to the maintenance fees established pursuant to section 3(b) of this Act or to maintenance fees hereafter established by law, as to the amounts paid and the number and timing of the payments.”

EFFECTIVE DATE OF 1980 AMENDMENT

Section 8 of Pub. L. 96-517 provided that:

“(a) Sections 2, 4, and 5 of this Act [amending this section, section 154 of this title, and section 1113 of Title 15, Commerce and Trade] will take effect upon enactment [Dec. 12, 1980].

“(b) Section 1 of this Act [enacting sections 301 to 307 of this title] will take effect on the first day of the seventh month beginning after its enactment [Dec. 12, 1980] and will apply to patents in force as of that date or issued thereafter.

“(c) Section 3 of this Act [amending section 42 of this title] will take effect on the first day of the first fiscal year beginning on or after one calendar year after enactment [Dec. 12, 1980]. However, until section 3 takes effect, the Commissioner may credit the Patent and Trademark Office appropriation account in the Treasury of the United States with the revenues from collected reexamination fees, which will be available to pay the costs to the Office of reexamination proceedings.

“(d) Any fee in effect as of the date of enactment of this Act [Dec. 12, 1980] will remain in effect until a corresponding fee established under section 41 of title 35, United States Code, or section 1113 of title 15, United States Code, takes effect.

“(e) Fees for maintaining a patent in force will not be applicable to patents applied for prior to the date of enactment of this Act [Dec. 12, 1980].

“(f) Sections 6 and 7 of this Act [enacting sections 200 to 211 of this title and amending sections 2186, 2457, and 5908 of Title 42, The Public Health and Welfare] will take effect on the first day of the seventh month beginning after its enactment [Dec. 12, 1980]. Implementing regulations may be issued earlier.

“(g) Sections 8 and 9 [enacting this note and provision set out as a note under section 14 of this title] will take effect on the date of enactment of this Act [Dec. 12, 1980].”

EFFECTIVE DATE OF 1975 AMENDMENTS

Amendment by Pub. L. 94-131 effective Jan. 24, 1978, and applicable on and after that date to patent applications filed in the United States and to international ap-

plications, where applicable, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 7 of Pub. L. 89-83 provided that:

“(a) This Act [amending this section, sections 112, 151, 154, and 282 of this title, and section 1113 of Title 15, Commerce and Trade, and repealing section 266 of this title] shall take effect three months after its enactment [July 24, 1965].

“(b) Items 1, 3, and 4 of section 41(a) of title 35, United States Code, as amended by section 1 of this Act, do not apply in further proceedings in applications filed prior to the effective date of this Act.

“(c) Item 2 of section 41(a), as amended by section 1 of this Act [item 2 of subsec. (a) of this section], and section 4 of this Act [amending section 151 of this title] do not apply in cases in which the notice of allowance of the application was sent, or in which a patent issued, prior to the effective date; and, in such cases, the fee due is the fee specified in this title prior to the effective date of this Act.

“(d) Item 3 of section 31 of the Trademark Act, as amended by section 3 of this Act [item 3 of section 1113(a) of Title 15], applies only in the case of registrations issued and registrations published under the provisions of section 12(c) of the Trademark Act [section 1062(c) of Title 15] on or after the effective date of this Act.”

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (i)(4) of this section relating to annual reports to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 55 of House Document No. 103-7.

PATENT AND TRADEMARK FEES IN FISCAL YEARS 2005 AND 2006

Pub. L. 108-447, div. B, title VIII, Dec. 8, 2004, 118 Stat. 2924, provided that:

“SEC. 801. FEES FOR PATENT SERVICES.

“(a) GENERAL PATENT FEES.—During fiscal years 2005 and 2006, subsection (a) of section 41 of title 35, United States Code, shall be administered as though that subsection reads as follows:

“(a) GENERAL FEES.—The Director shall charge the following fees:

“(1) FILING AND BASIC NATIONAL FEES.—

“(A) On filing each application for an original patent, except for design, plant, or provisional applications, \$300.

“(B) On filing each application for an original design patent, \$200.

“(C) On filing each application for an original plant patent, \$200.

“(D) On filing each provisional application for an original patent, \$200.

“(E) On filing each application for the reissue of a patent, \$300.

“(F) The basic national fee for each international application filed under the treaty defined in section 351(a) of this title entering the national stage under section 371 of this title, \$300.

“(G) In addition, excluding any sequence listing or computer program listing filed in an electronic medium as prescribed by the Director, for any application the specification and drawings of which exceed 100 sheets of paper (or equivalent as prescribed by the Director if filed in an electronic medium), \$250 for each additional 50 sheets of paper (or equivalent as prescribed by the Director if filed in an electronic medium) or fraction thereof.

“(2) EXCESS CLAIMS FEES.—In addition to the fee specified in paragraph (1)—

“(A) on filing or on presentation at any other time, \$200 for each claim in independent form in excess of 3;

“(B) on filing or on presentation at any other time, \$50 for each claim (whether dependent or independent) in excess of 20; and

“(C) for each application containing a multiple dependent claim, \$360.

For the purpose of computing fees under this paragraph, a multiple dependent claim referred to in section 112 of this title or any claim depending therefrom shall be considered as separate dependent claims in accordance with the number of claims to which reference is made. The Director may by regulation provide for a refund of any part of the fee specified in this paragraph for any claim that is canceled before an examination on the merits, as prescribed by the Director, has been made of the application under section 131 of this title. Errors in payment of the additional fees under this paragraph may be rectified in accordance with regulations prescribed by the Director.

“(3) EXAMINATION FEES.—

“(A) For examination of each application for an original patent, except for design, plant, provisional, or international applications, \$200.

“(B) For examination of each application for an original design patent, \$130.

“(C) For examination of each application for an original plant patent, \$160.

“(D) For examination of the national stage of each international application, \$200.

“(E) For examination of each application for the reissue of a patent, \$600.

The provisions of section 111(a) of this title relating to the payment of the fee for filing the application shall apply to the payment of the fee specified in this paragraph with respect to an application filed under section 111(a) of this title. The provisions of section 371(d) of this title relating to the payment of the national fee shall apply to the payment of the fee specified in this paragraph with respect to an international application.

“(4) ISSUE FEES.—

“(A) For issuing each original patent, except for design or plant patents, \$1,400.

“(B) For issuing each original design patent, \$800.

“(C) For issuing each original plant patent, \$1,100.

“(D) For issuing each reissue patent, \$1,400.

“(5) DISCLAIMER FEE.—On filing each disclaimer, \$130.

“(6) APPEAL FEES.—

“(A) On filing an appeal from the examiner to the Board of Patent Appeals and Interferences, \$500.

“(B) In addition, on filing a brief in support of the appeal, \$500, and on requesting an oral hearing in the appeal before the Board of Patent Appeals and Interferences, \$1,000.

“(7) REVIVAL FEES.—On filing each petition for the revival of an unintentionally abandoned application for a patent, for the unintentionally delayed payment of the fee for issuing each patent, or for an unintentionally delayed response by the patent owner in any reexamination proceeding, \$1,500, unless the petition is filed under section 133 or 151 of this title, in which case the fee shall be \$500.

“(8) EXTENSION FEES.—For petitions for 1-month extensions of time to take actions required by the Director in an application—

“(A) on filing a first petition, \$120;

“(B) on filing a second petition, \$330; and

“(C) on filing a third or subsequent petition, \$570.”

“(b) PATENT MAINTENANCE FEES.—During fiscal years 2005 and 2006, subsection (b) of section 41 of title 35, United States Code, shall be administered as though that subsection reads as follows:

“(b) MAINTENANCE FEES.—The Director shall charge the following fees for maintaining in force all patents

based on applications filed on or after December 12, 1980:

- “(1) 3 years and 6 months after grant, \$900.
- “(2) 7 years and 6 months after grant, \$2,300.
- “(3) 11 years and 6 months after grant, \$3,800.

Unless payment of the applicable maintenance fee is received in the United States Patent and Trademark Office on or before the date the fee is due or within a grace period of 6 months thereafter, the patent will expire as of the end of such grace period. The Director may require the payment of a surcharge as a condition of accepting within such 6-month grace period the payment of an applicable maintenance fee. No fee may be established for maintaining a design or plant patent in force.

“(c) PATENT SEARCH FEES.—During fiscal years 2005 and 2006, subsection (d) of section 41 of title 35, United States Code, shall be administered as though that subsection reads as follows:

“(d) PATENT SEARCH AND OTHER FEES.—

“(1) PATENT SEARCH FEES.—

“(A) The Director shall charge a fee for the search of each application for a patent, except for provisional applications. The Director shall establish the fees charged under this paragraph to recover an amount not to exceed the estimated average cost to the Office of searching applications for patent either by acquiring a search report from a qualified search authority, or by causing a search by Office personnel to be made, of each application for patent. For the 3-year period beginning on the date of enactment of this Act, the fee for a search by a qualified search authority of a patent application described in clause (i), (iv), or (v) of subparagraph (B) may not exceed \$500, of a patent application described in clause (ii) of subparagraph (B) may not exceed \$100, and of a patent application described in clause (iii) of subparagraph (B) may not exceed \$300. The Director may not increase any such fee by more than 20 percent in each of the next three 1-year periods, and the Director may not increase any such fee thereafter.

“(B) For purposes of determining the fees to be established under this paragraph, the cost to the Office of causing a search of an application to be made by Office personnel shall be deemed to be—

- “(i) \$500 for each application for an original patent, except for design, plant, provisional, or international applications;
- “(ii) \$100 for each application for an original design patent;
- “(iii) \$300 for each application for an original plant patent;
- “(iv) \$500 for the national stage of each international application; and
- “(v) \$500 for each application for the reissue of a patent.

“(C) The provisions of section 111(a)(3) of this title relating to the payment of the fee for filing the application shall apply to the payment of the fee specified in this paragraph with respect to an application filed under section 111(a) of this title. The provisions of section 371(d) of this title relating to the payment of the national fee shall apply to the payment of the fee specified in this paragraph with respect to an international application.

“(D) The Director may by regulation provide for a refund of any part of the fee specified in this paragraph for any applicant who files a written declaration of express abandonment as prescribed by the Director before an examination has been made of the application under section 131 of this title, and for any applicant who provides a search report that meets the conditions prescribed by the Director.

“(E) For purposes of subparagraph (A), a “qualified search authority” may not include a commercial entity unless—

- “(i) the Director conducts a pilot program of limited scope, conducted over a period of not more than 18 months, which demonstrates that

searches by commercial entities of the available prior art relating to the subject matter of inventions claimed in patent applications—

- “(I) are accurate; and
- “(II) meet or exceed the standards of searches conducted by and used by the Patent and Trademark Office during the patent examination process;
- “(ii) the Director submits a report on the results of the pilot program to Congress and the Patent Public Advisory Committee that includes—
 - “(I) a description of the scope and duration of the pilot program;
 - “(II) the identity of each commercial entity participating in the pilot program;
 - “(III) an explanation of the methodology used to evaluate the accuracy and quality of the search reports; and
 - “(IV) an assessment of the effects that the pilot program, as compared to searches conducted by the Patent and Trademark Office, had and will have on—
 - “(aa) patentability determinations;
 - “(bb) productivity of the Patent and Trademark Office;
 - “(cc) costs to the Patent and Trademark Office;
 - “(dd) costs to patent applicants; and
 - “(ee) other relevant factors;

“(iii) the Patent Public Advisory Committee reviews and analyzes the Director's report under clause (ii) and the results of the pilot program and submits a separate report on its analysis to the Director and the Congress that includes—

- “(I) an independent evaluation of the effects that the pilot program, as compared to searches conducted by the Patent and Trademark Office, had and will have on the factors set forth in clause (ii)(IV); and
- “(II) an analysis of the reasonableness, appropriateness, and effectiveness of the methods used in the pilot program to make the evaluations required under clause (ii)(IV); and

“(iv) Congress does not, during the 1-year period beginning on the date on which the Patent Public Advisory Committee submits its report to the Congress under clause (iii), enact a law prohibiting searches by commercial entities of the available prior art relating to the subject matter of inventions claimed in patent applications.

“(F) The Director shall require that any search by a qualified search authority that is a commercial entity is conducted in the United States by persons that—

- “(i) if individuals, are United States citizens; and
- “(ii) if business concerns, are organized under the laws of the United States or any State and employ United States citizens to perform the searches.

“(G) A search of an application that is the subject of a secrecy order under section 181 or otherwise involves classified information may only be conducted by Office personnel.

“(H) A qualified search authority that is a commercial entity may not conduct a search of a patent application if the entity has any direct or indirect financial interest in any patent or in any pending or imminent application for patent filed or to be filed in the Patent and Trademark Office.

“(2) OTHER FEES.—The Director shall establish fees for all other processing, services, or materials relating to patents not specified in this section to recover the estimated average cost to the Office of such processing, services, or materials, except that the Director shall charge the following fees for the following services:

- “(A) For recording a document affecting title, \$40 per property.

“(B) For each photocopy, \$.25 per page.

“(C) For each black and white copy of a patent, \$3.

The yearly fee for providing a library specified in section 12 of this title with uncertified printed copies of the specifications and drawings for all patents in that year shall be \$50.’

“(d) ADJUSTMENTS.—During fiscal years 2005 and 2006, subsection (f) of section 41 of title 35, United States Code, shall apply to the fees established under this section.

“(e) FEES FOR SMALL ENTITIES.—During fiscal years 2005 and 2006, subsection (h) of section 41 of title 35, United States Code, shall be administered as though that subsection is amended—

“(1) in paragraph (1), by striking ‘Fees charged under subsection (a) or (b)’ and inserting ‘Subject to paragraph (3), fees charged under subsections (a), (b), and (d)(1); and

“(2) by adding at the end the following new paragraph:

“(3) The fee charged under subsection (a)(1)(A) shall be reduced by 75 percent with respect to its application to any entity to which paragraph (1) applies, if the application is filed by electronic means as prescribed by the Director.’

“SEC. 802. ADJUSTMENT OF TRADEMARK FEES.

“(a) FEE FOR FILING APPLICATION.—During fiscal years 2005 and 2006, under such conditions as may be prescribed by the Director, the fee under section 31(a) of the Trademark Act of 1946 (15 U.S.C. 1113(a)) for: (1) the filing of a paper application for the registration of a trademark shall be \$375; (2) the filing of an electronic application shall be \$325; and (3) the filing of an electronic application meeting certain additional requirements prescribed by the Director shall be \$275. During fiscal years 2005 and 2006, the provisions of the second and third sentences of section 31(a) of the Trademark Act of 1946 shall apply to the fees established under this section.

“(b) REFERENCE TO TRADEMARK ACT OF 1946.—For purposes of this section, the ‘Trademark Act of 1946’ refers to the Act entitled ‘An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes.’, approved July 5, 1946 (15 U.S.C. 1051 et seq.).

“SEC. 803. EFFECTIVE DATE, APPLICABILITY, AND TRANSITIONAL PROVISION.

“(a) EFFECTIVE DATE.—Except as otherwise provided in this title (including this section), the provisions of this title shall take effect on the date of the enactment of this Act [Dec. 8, 2004] and shall apply only with respect to the remaining portion of fiscal year 2005 and fiscal year 2006.

“(b) APPLICABILITY.—

“(1)(A) Except as provided in subparagraphs (B) and (C), the provisions of section 801 shall apply to all patents, whenever granted, and to all patent applications pending on or filed after the effective date set forth in subsection (a) of this section.

“(B)(i) Except as provided in clause (ii), subsections (a)(1) and (3) and (d)(1) of section 41 of title 35, United States Code, as administered as provided in this title, shall apply only to—

“(I) applications for patents filed under section 111 of title 35, United States Code, on or after the effective date set forth in subsection (a) of this section, and

“(II) international applications entering the national stage under section 371 of title 35, United States Code, for which the basic national fee specified in section 41 of title 35, United States Code, was not paid before the effective date set forth in subsection (a) of this section.

“(ii) Section 41(a)(1)(D) of title 35, United States Code, as administered as provided in this title, shall apply only to applications for patent filed under section 111(b) of title 35, United States Code, before, on,

or after the effective date set forth in subsection (a) of this section in which the filing fee specified in section 41 of title 35, United States Code, was not paid before the effective date set forth in subsection (a) of this section.

“(C) Section 41(a)(2) of title 35, United States Code, as administered as provided in this title, shall apply only to the extent that the number of excess claims, after giving effect to any cancellation of claims, is in excess of the number of claims for which the excess claims fee specified in section 41 of title 35, United States Code, was paid before the effective date set forth in subsection (a) of this section.

“(2) The provisions of section 802 shall apply to all applications for the registration of a trademark filed or amended on or after the effective date set forth in subsection (a) of this section.

“(c) TRANSITIONAL PROVISIONS.—

“(1) SEARCH FEES.—During fiscal years 2005 and 2006, the Director shall charge—

“(A) for the search of each application for an original patent, except for design, plant, provisional, or international application, \$500;

“(B) for the search of each application for an original design patent, \$100;

“(C) for the search of each application for an original plant patent, \$300;

“(D) for the search of the national stage of each international application, \$500; and

“(E) for the search of each application for the reissue of a patent, \$500.

“(2) TIMING OF FEES.—The provisions of section 111(a)(3) of title 35, United States Code, relating to the payment of the fee for filing the application shall apply to the payment of the fee specified in paragraph (1) with respect to an application filed under section 111(a) of title 35, United States Code. The provisions of section 371(d) of title 35, United States Code, relating to the payment of the national fee shall apply to the payment of the fee specified in paragraph (1) with respect to an international application.

“SEC. 804. DEFINITION.

“In this title, the term ‘Director’ means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.”

STUDY ON ALTERNATIVE FEE STRUCTURES

Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4204], Nov. 29, 1999, 113 Stat. 1536, 1501A–555, provided that: “The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office shall conduct a study of alternative fee structures that could be adopted by the United States Patent and Trademark Office to encourage maximum participation by the inventor community in the United States. The Director shall submit such study to the Committees on the Judiciary of the House of Representatives and the Senate not later than 1 year after the date of the enactment of this Act [Nov. 29, 1999].”

COST RECOVERY FOR PUBLICATION

Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4506], Nov. 29, 1999, 113 Stat. 1536, 1501A–565, provided that: “The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office shall recover the cost of early publication required by the amendment made by section 4502 [amending section 122 of this title] by charging a separate publication fee after notice of allowance is given under section 151 of title 35, United States Code.”

CONTINUATION OF MAINTENANCE

Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4804(d)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–590, provided that: “The Under Secretary of Commerce for Intellectual Property and Director of the United States

Patent and Trademark Office shall not, pursuant to the amendment made by paragraph (1) [amending this section], cease to maintain, for use by the public, paper or microform collections of United States patents, foreign patent documents, and United States trademark registrations, except pursuant to notice and opportunity for public comment and except that the Director shall first submit a report to the Committees on the Judiciary of the Senate and the House of Representatives detailing such plan, including a description of the mechanisms in place to ensure the integrity of such collections and the data contained therein, as well as to ensure prompt public access to the most current available information, and certifying that the implementation of such plan will not negatively impact the public."

ACCESS TO ELECTRONIC PATENT INFORMATION

Pub. L. 105-289, § 4, Oct. 27, 1998, 112 Stat. 2781, provided that:

"(a) IN GENERAL.—The United States Patent and Trademark Office shall develop and implement statewide computer networks with remote library sites in requesting rural States such that citizens in those States will have enhanced access to information in their State's patent and trademark depository library.

"(b) DEFINITION.—In this section, the term 'rural States' means the States that qualified on January 1, 1997, as rural States under section 1501(b) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796bb(b) [3796bb(b)])."

WAIVER OF CERTAIN RESTRICTIONS

Section 2(c) of Pub. L. 102-204 provided that: "Surcharges established for fiscal year 1992 under section 10101(c) of the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101-508, set out below] may take effect on or after 1 day after such surcharges are published in the Federal Register. Section 553 of title 5, United States Code, shall not apply to the establishment of such surcharges for fiscal year 1992."

UNSPECIFIED PATENT FEES FOR FISCAL YEAR 1992; EFFECTIVE DATE CONTINGENT UPON PUBLICATION IN FEDERAL REGISTER

Section 5(c)(2) of Pub. L. 102-204 provided that fees established by the Commissioner of Patents and Trademarks under subsec. (d) of this section during fiscal year 1992 could take effect on or after 1 day after being published in the Federal Register, and that subsec. (g) of this section and section 553 of title 5 were not to apply to the establishment of such fees during fiscal year 1992.

PATENT INFORMATION DISSEMINATION

Section 11 of Pub. L. 102-204 set out definitions, established a patent information demonstration program, stipulated the information to be disseminated, provided for fees for CD-ROM purchase, and required a report to Congress one year after Dec. 10, 1991.

SURCHARGES ON PATENT FEES

Pub. L. 101-508, title X, § 10101(a)-(c), Nov. 5, 1990, 104 Stat. 1388-391, as amended by Pub. L. 102-204, § 2(b), Dec. 10, 1991, 105 Stat. 1636; Pub. L. 103-66, title VIII, § 8001, Aug. 10, 1993, 107 Stat. 402, provided for surcharges for fees under this section during fiscal years 1991 through 1998, and stipulated how surcharges would be used and credited in those fiscal years.

EFFECT ON OTHER LAWS

Pub. L. 101-508, title X, § 10103, Nov. 5, 1990, 104 Stat. 1388-392, provided that: "Except for section 10101(d) [not classified to the Code], nothing in this subtitle [subtitle B (§§ 10101-10103) of title X of Pub. L. 101-508, enacting provisions set out as notes under this section and section 1 of this title] affects the provisions of Public Law 100-703 (102 Stat. 4674 and following) [see Tables for classification]."

PUBLIC ACCESS TO PATENT AND TRADEMARK OFFICE INFORMATION

Pub. L. 100-703, title I, § 104(b), (c), Nov. 19, 1988, 102 Stat. 4675, provided that the Commissioner of Patents and Trademarks maintain patent and trademark collections, search rooms, and libraries for use by the public without fees and authorized establishment of fees for access by the public to automated search systems of the Patent and Trademark Office, prior to repeal by Pub. L. 102-204, § 9, Dec. 10, 1991, 105 Stat. 1641. See section 41(i) of this title.

Pub. L. 99-607, § 4, Nov. 6, 1986, 100 Stat. 3471, provided that the Commissioner of Patents and Trademarks could not impose a fee for use of public patent or trademark search rooms and libraries and that costs of such rooms and libraries should come from amounts appropriated by Congress, prior to repeal by Pub. L. 100-703, title I, § 104(a), Nov. 19, 1988, 102 Stat. 4675.

PATENT FEES

Pub. L. 100-703, title I, § 103(b), Nov. 19, 1988, 102 Stat. 4674, prohibited Commissioner of Patents and Trademarks, during fiscal years 1989, 1990, and 1991, from increasing fees established under subsec. (d) of this section, except for purposes of making adjustments which in the aggregate did not exceed fluctuations during the previous three years in the Consumer Price Index, and from establishing additional fees under such section during such fiscal years. Similar provisions were contained in Pub. L. 99-607, § 3(b), Nov. 6, 1986, 100 Stat. 3471.

Section 404 of Pub. L. 98-622 provided that:

"(a) Notwithstanding section 41 of title 35, United States Code, as in effect before the enactment of Public Law 97-247 (96 Stat. 317) [Aug. 27, 1982], no fee shall be collected for maintaining a plant patent in force.

"(b) Notwithstanding section 41(c) of title 35, United States Code, as in effect before the enactment of Public Law 97-247 (96 Stat. 317) [Aug. 27, 1982], the Commissioner of Patents and Trademarks [now Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office] may accept, after the six-month grace period referred to in such section 41(c), the payment of any maintenance fee due on any patent based on an application filed in the Patent and Trademark Office on or after December 12, 1980, and before August 27, 1982, to the same extent as in the case of patents based on applications filed in the Patent and Trademark Office on or after August 27, 1982."

§ 42. Patent and Trademark Office funding

(a) All fees for services performed by or materials furnished by the Patent and Trademark Office will be payable to the Director.

(b) All fees paid to the Director and all appropriations for defraying the costs of the activities of the Patent and Trademark Office will be credited to the Patent and Trademark Office Appropriation Account in the Treasury of the United States.

(c) To the extent and in the amounts provided in advance in appropriations Acts, fees authorized in this title or any other Act to be charged or established by the Director shall be collected by and shall be available to the Director to carry out the activities of the Patent and Trademark Office. All fees available to the Director under section 31 of the Trademark Act of 1946 shall be used only for the processing of trademark registrations and for other activities, services, and materials relating to trademarks and to cover a proportionate share of the administrative costs of the Patent and Trademark Office.

(d) The Director may refund any fee paid by mistake or any amount paid in excess of that required.

(e) The Secretary of Commerce shall, on the day each year on which the President submits the annual budget to the Congress, provide to the Committees on the Judiciary of the Senate and the House of Representatives—

(1) a list of patent and trademark fee collections by the Patent and Trademark Office during the preceding fiscal year;

(2) a list of activities of the Patent and Trademark Office during the preceding fiscal year which were supported by patent fee expenditures, trademark fee expenditures, and appropriations;

(3) budget plans for significant programs, projects, and activities of the Office, including out-year funding estimates;

(4) any proposed disposition of surplus fees by the Office; and

(5) such other information as the committees consider necessary.

(July 19, 1952, ch. 950, 66 Stat. 796; Pub. L. 94-131, § 4, Nov. 14, 1975, 89 Stat. 690; Pub. L. 96-517, § 3, Dec. 12, 1980, 94 Stat. 3018; Pub. L. 97-247, § 3(g), Aug. 27, 1982, 96 Stat. 319; Pub. L. 97-258, § 3(i), Sept. 13, 1982, 96 Stat. 1065; Pub. L. 102-204, § 4, 5(e), Dec. 10, 1991, 105 Stat. 1637, 1640; Pub. L. 105-358, § 4, Nov. 10, 1998, 112 Stat. 3274; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, §§ 4205, 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-555, 1501A-582; Pub. L. 107-273, div. C, title III, § 13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 79 (Mar. 6, 1920, ch. 94, § 1 (part), 41 Stat. 503, 512).

Language has been changed.

REFERENCES IN TEXT

Section 31 of the Trademark Act of 1946, referred to in subsec. (c), is classified to section 1113 of Title 15, Commerce and Trade.

AMENDMENTS

2002—Subsecs. (a), (b). Pub. L. 107-273 made technical correction to directory language of Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)]. See 1999 Amendment note below.

1999—Subsecs. (a), (b). Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], as amended by Pub. L. 107-273, substituted “Director” for “Commissioner”.

Subsec. (c). Pub. L. 106-113 substituted “Director” for “Commissioner” wherever appearing and, in second sentence, substituted “All fees available” for “Fees available” and “shall be used” for “may be used”.

Subsec. (d). Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], substituted “Director” for “Commissioner”.

1998—Subsec. (c). Pub. L. 105-358 substituted first sentence for former first sentence which read as follows: “Revenues from fees shall be available to the Commissioner to carry out, to the extent provided in appropriation Acts, the activities of the Patent and Trademark Office.”

1991—Subsec. (c). Pub. L. 102-204, § 5(e), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Revenues from fees will be available to the Commissioner of Patents to carry out, to the extent provided for in appropriation Acts, the activities of the Patent and Trademark Office. Fees available to the Commissioner under section 31 of the Trademark Act of 1946, as amended (15 U.S.C. 1113), shall be used exclu-

sively for the processing of trademark registrations and for other services and materials related to trademarks.”

Subsec. (e). Pub. L. 102-204, § 4, added subsec. (e).

1982—Subsec. (b). Pub. L. 97-258 struck out “, the provisions of section 725e of title 31, United States Code, notwithstanding” after “United States”.

Subsec. (c). Pub. L. 97-247 inserted provision that fees available to the Commissioner under section 31 of the Trademark Act of 1946, as amended (15 U.S.C. 1113), be used exclusively for the processing of trademark registrations and for other services and materials related to trademarks.

1980—Pub. L. 96-517 designated existing provision relating to payment of patent fees as subsec. (a) and struck out provision that, except as provided in sections 361(b) and 376(b) of this title, the Commissioner deposit fees paid in the Treasury of the United States in such manner as directed by the Secretary of the Treasury, designated existing provision relating to return of excess amounts paid as subsec. (d), and added subsecs. (b) and (c).

1975—Pub. L. 94-131 inserted “, except as provided in sections 361(b) and 376(b) of this title.”.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(9) [title IV, § 4732(a)(10)(A)] of Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-358 effective Oct. 1, 1998, see section 5 of Pub. L. 105-358, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-247 effective Oct. 1, 1982, see section 17(a) of Pub. L. 97-247, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-517 effective on first day of first fiscal year beginning on or after one calendar year after Dec. 12, 1980, subject to authorization of appropriation account credits from collected reexamination fees prior to the effective date, made available for payment of reexamination proceedings costs, see section 8(c) of Pub. L. 96-517, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-131 effective Jan. 24, 1978, and applicable on and after that date to patent applications filed in the United States and to international applications, where applicable, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

AUTHORIZATION OF AMOUNTS AVAILABLE TO THE PATENT AND TRADEMARK OFFICE

Pub. L. 107-273, div. C, title III, § 13102, Nov. 2, 2002, 116 Stat. 1899, provided that:

“(a) IN GENERAL.—There are authorized to be appropriated to the United States Patent and Trademark Office for salaries and necessary expenses for each of the fiscal years 2003 through 2008 an amount equal to the fees estimated by the Secretary of Commerce to be collected in each such fiscal year, respectively, under—

“(1) title 35, United States Code; and

“(2) the Act entitled ‘An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes’, approved July 5, 1946 (15 U.S.C. 1051 et seq.) (commonly referred to as the Trademark Act of 1946).

“(b) ESTIMATES.—Not later than February 15, of each fiscal year, the Undersecretary of Commerce for Intel-

lectual Property and the Director of the Patent and Trademark Office (in this subtitle [subtitle A (§§13101–13106) of title III of div. C of Pub. L. 107–273, amending sections 134, 141, 303, 312, and 315 of this title and enacting provisions set out as notes under sections 2, 134, and 303 of this title] referred to as the Director) shall submit an estimate of all fees referred to under subsection (a) to be collected in the next fiscal year to the chairman and ranking member of—

“(1) the Committees on Appropriations and Judiciary of the Senate; and

“(2) the Committees on Appropriations and Judiciary of the House of Representatives.”

APPROPRIATIONS AUTHORIZED TO BE CARRIED OVER

Pub. L. 100–703, title I, §102, Nov. 19, 1988, 102 Stat. 4674, provided that: “Amounts appropriated under this Act and such fees as may be collected under title 35, United States Code, and the Trademark Act of 1946 (15 U.S.C. 1051 and following) may remain available until expended.”

Similar provisions were contained in the following prior authorization act:

Pub. L. 99–607, §2, Nov. 6, 1986, 100 Stat. 3470.

PART II—PATENTABILITY OF INVENTIONS AND GRANT OF PATENTS

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AMENDMENTS

2002—Pub. L. 107–273, div. C, title III, §13206(a)(6), Nov. 2, 2002, 116 Stat. 1904, substituted “Examination of Application” for “Examination of Applications” in heading of chapter 12.

1982—Pub. L. 97–256, title I, §101(6), Sept. 8, 1982, 96 Stat. 816, added item for chapter 18.

1975—Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949, substituted “Patent and Trademark Office” for “Patent Office” in heading of chapter 13.

CHAPTER 10—PATENTABILITY OF INVENTIONS

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| 100. | Definitions. |
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AMENDMENTS

1990—Pub. L. 101–580, §1(b), Nov. 15, 1990, 104 Stat. 2863, added item 105.

§ 100. Definitions

When used in this title unless the context otherwise indicates—

(a) The term “invention” means invention or discovery.

¹ So in original. Does not conform to chapter heading.

(b) The term “process” means process, art or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material.

(c) The terms “United States” and “this country” mean the United States of America, its territories and possessions.

(d) The word “patentee” includes not only the patentee to whom the patent was issued but also the successors in title to the patentee.

(e) The term “third-party requester” means a person requesting ex parte reexamination under section 302 or inter partes reexamination under section 311 who is not the patent owner.

(July 19, 1952, ch. 950, 66 Stat. 797; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4603], Nov. 29, 1999, 113 Stat. 1536, 1501A–567.)

HISTORICAL AND REVISION NOTES

Paragraph (a) is added only to avoid repetition of the phrase “invention or discovery” and its derivatives throughout the revised title. The present statutes use the phrase “invention or discovery” and derivatives.

Paragraph (b) is noted under section 101.

Paragraphs (c) and (d) are added to avoid the use of long expressions in various parts of the revised title.

AMENDMENTS

1999—Subsec. (e). Pub. L. 106–113 added subsec. (e).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective Nov. 29, 1999, and applicable to any patent issuing from an original application filed in the United States on or after that date, see section 1000(a)(9) [title IV, §4608(a)] of Pub. L. 106–113, set out as a note under section 41 of this title.

§ 101. Inventions patentable

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

(July 19, 1952, ch. 950, 66 Stat. 797.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §31 (R.S. 4886, amended (1) Mar. 3, 1897, ch. 391, §1, 29 Stat. 692, (2) May 23, 1930, ch. 312, §1, 46 Stat. 376, (3) Aug. 5, 1939, ch. 450, §1, 53 Stat. 1212).

The corresponding section of existing statute is split into two sections, section 101 relating to the subject matter for which patents may be obtained, and section 102 defining statutory novelty and stating other conditions for patentability.

Section 101 follows the wording of the existing statute as to the subject matter for patents, except that reference to plant patents has been omitted for incorporation in section 301 and the word “art” has been replaced by “process”, which is defined in section 100. The word “art” in the corresponding section of the existing statute has a different meaning than the same word as used in other places in the statute; it has been interpreted by the courts as being practically synonymous with process or method. “Process” has been used as its meaning is more readily grasped than “art” as interpreted, and the definition in section 100(b) makes it clear that “process or method” is meant. The remainder of the definition clarifies the status of processes or methods which involve merely the new use of a known process, machine, manufacture, composition of matter, or material; they are processes or methods under the statute and may be patented provided the conditions for patentability are satisfied.